

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

369A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,654

THEODORE G. HECK,

Appellant,

v.

STANLEY R. RESOR,
Secretary of Department of the Army,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 9 1971

Nathan J. Paulson
CLERK

(i)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THEODORE G. HECK
4011 Seventh Avenue
Rock Island, Illinois 61201

Plaintiff

v.

STANLEY R. RESOR, Secretary
Department of the Army
Washington, D. C. 20310

Defendant

Civil Action No. 2606-65

COMPLAINT FOR A DECLARATORY JUDGMENT AND MANDATORY
INJUNCTION ORDERING THE SECRETARY OF THE ARMY TO
REINSTATE PLAINTIFF IN HIS POSITION AS INDUSTRIAL
ENGINEER IN THE U. S. ARMY WEAPONS COMMAND

Plaintiff for his complaint against the defendant alleges
as follows:

1. Jurisdiction of this Court over the subject matter is
founded upon U.S.C. Title 28, Sections 1331, 1332, 2201, and
2202; and Title 11, Sections 305 and 306, of the District of
Columbia Code.

2. Plaintiff is a citizen of the United States and a
resident of the State of Illinois and from September 13, 1963,
to August 19, 1964, was employed as an Industrial Engineer with
the U. S. Army Weapons Command of the Department of the Army at

the Rock Island Arsenal, Rock Island, Illinois, and brings this action in his own right. Defendant Stanley M. Resor is the Secretary of the Army and officially resides in the District of Columbia.

3. On or about July 7, 1964, plaintiff was given a letter signed by Paul H. HOFFKO, Chief, Combat Vehicles Branch, U. S. Army Weapons Command, Rock Island Arsenal, Rock Island, Illinois, proposing a "separation-disqualification" of plaintiff on August 3, 1964, later extended to August 17, on the grounds that his attitude had not been satisfactory during his probationary period.

4. Plaintiff replied in writing on July 15, 1964, denying that his attitude had been unsatisfactory.

5. On August 17, 1964, plaintiff was notified by Harold SEDREL, Chief, Personnel and Training Office, U. S. Army Weapons Command, Rock Island Arsenal, Rock Island, Illinois, that the charges had been sustained and his "separation-disqualification" would be effected on August 18, 1964.

6. On August 18, 1964, plaintiff was separated, and on the same day filed a notice of appeal from the decision sustaining the charges against him.

7. Following a hearing on September 30, 1964, grievance examiners recommended that the decision separating the plaintiff

be affirmed, even though the testimony adduced showed that one or more of the witnesses against plaintiff had committed perjury and that some of the evidence was manufactured.

8. On October 3, 1964, plaintiff appealed to Headquarters, United States Army Materiel Command, and was notified on January 12, 1965, that the decision was affirmed. On January 28, 1965, plaintiff requested a review by the Secretary of the Army, and was notified on May 7, 1965, that the charges were sustained. On May 26, 1965, plaintiff appealed to the United States Civil Service Commission, Chicago Region, which, on June 2, 1965, refused to consider the appeal on the ground that it lacked jurisdiction. The plaintiff has exhausted his administrative remedies.

9. The charges against the plaintiff upon which he was separated were false, unreasonable, and malicious and the action was arbitrary and capricious in that the charges were not supported by the evidence, and the decision to separate was affirmed on the basis of perjured testimony and manufactured evidence.

WHEREFORE, the premises considered, plaintiff prays:

1. That an order be entered herein declaring plaintiff's August 18, 1964, separation from the Army Weapons Command to have been unwarranted and illegal;

2. That a mandatory injunction issue directing the Secretary of the Army to take or cause to be taken appropriate action to reinstate and restore plaintiff to the position held by him on August 13, 1964; and

3. For such other and further relief as to the Court shall seem just and proper.

SIGNED BYRON H. SCOTT

Byron H. Scott
 Attorney for Plaintiff
 1020 Vermont Avenue, N. W.
 Washington, D. C. 20005
 Sterling 3-1025

[Caption Omitted in Printing]

ANSWER

Defendant by his attorney, the United States Attorney for the District of Columbia, on the basis of the certified administrative records answers the allegations in the complaint as follows:

1. As for the jurisdictional allegations contained in paragraph 1 of the complaint: Denies that the Court has jurisdiction over this civil service probational employee discharge matter, other than to determine that the ground for discharge is not patently arbitrary or capricious on its face, and that the discharge action taken conforms to the governing regulations. Affirmatively

avers that the Court's jurisdiction to conduct judicial review to this limited extent is restricted to consideration of the certified administrative records.

2 - 6. Admits the allegations contained in paragraphs 2 - 6 of the complaint. Refers the Court to the certified administrative record for the complete facts in respect of these allegations.

7. As for the allegations contained in paragraph 7 of the complaint: Admits that a hearing was held on September 30, 1964 on plaintiff's grievance appeal before Grievance Examiner Frank W. Carlson; that Examiner Carlson, upon reviewing the charges and evidence, recommended that the decision separating plaintiff be sustained. Denies that the testimony adduced on behalf of the agency at the grievance hearing "showed that one or more of the witnesses against plaintiff had committed perjury and that some of the evidence [against plaintiff] was manufactured." Affirmatively avers that Examiner Carlson, upon objective analysis of the testimony, concluded that credence was to be given the testimony proffered by the agency's witnesses, over that proffered by plaintiff, where inconsistent. Refers the Court to the certified administrative record for the complete facts in respect of these allegations.

8. Admits the allegations contained in paragraph 8 of the complaint.

9. Denies the allegations made in paragraph 9 of the complaint. Affirmatively avers that the discharge of this probationary employee is in full conformity with law, is not arbitrary or capricious, and is substantiated by the evidence in the record. Refers the Court to the certified administrative record for the complete facts in respect of these allegations.

/s/
~~WILLIAM G. WOODS~~
 United States Attorney

/s/
~~JOSEPH H. HANCOCK~~
 Assistant United States Attorney

/s/
~~WILLIAM G. WOODS~~
 Assistant United States Attorney

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DEFENDANT'S MOTION TO DISMISS,
 OR, IN THE ALTERNATIVE, FOR
 SUMMARY JUDGMENT

Defendant by his attorney, the United States Attorney for the District of Columbia, respectfully moves the Court to dismiss this action on the grounds that the Court lacks jurisdiction over the subject matter in that this case is not judicially reviewable and that plaintiff has failed to state a claim upon which relief can be granted.

In the alternative, defendant moves the Court for summary judgment in his favor, on the ground that there is no genuine issue as to any material fact and defendant is entitled to judgment as a matter of law.

Defendant incorporates into his alternative motion for summary judgment, by attachment hereto, the relating certified Department of the Army records marked as Gov't Ex. 1 and the relating certified Civil Service Commission records marked as Gov't Ex. 2.

In support hereof, defendant submits a statement of material facts as to which there is no genuine issue and a memorandum of points and authorities.

/s/

THOMAS A. FLEMING
United States Attorney

/s/

JOSEPH M. HANNON
Assistant United States Attorney

/s/

ROBERT S. BENSON, JR.
Assistant United States Attorney

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STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE

Preliminary Statement

This is a civil matter involving a discharge case. Plaintiff began his Government employment on August 13, 1963, as an industrial engineer (career-conditional appointment) GS-396-12, at Headquarters, U.S. Army, Rock Island Arsenal, Illinois. Before completing his probationary period, on August 13, 1964, plaintiff was discharged from his position. He is here suing to have the separation order declared unwarranted and illegal in that the decision was arbitrary and capricious and not based on substantial evidence. He seeks to have the Secretary of the Army directed to reinstate and restore plaintiff to the position held by him on August 13, 1964.

While there are no factual issues here triable by the Court, defendant nevertheless submits -- for the Court's convenience and in general conformity with Local Rule 9(h) -- the following statement of the material facts, as reflected in the certified records of the Department of the Army and the Civil Service Commission. (Gov't Exs. 1 & 2.)

The Material Facts

1. Plaintiff was employed as a civilian industrial engineer (career-conditional appointment), Job No. 1019, GS-396-12, \$9,980.00 per annum, at Headquarters, United States

Army Weapons Command, Rock Island Arsenal, Illinois, from September 13, 1963 to August 18, 1964.

2. While still within his one-year probationary period of employment, plaintiff was advised by letter dated July 7, 1964 and bearing the signature of Mr. Paul H. Noffke, Chief, Combat Vehicles Branch, Army Weapons Command, Rock Island Arsenal, Illinois, of his proposed "separation - disqualification" from his position as industrial engineer, to become effective August 3, 1964. (Gov't Ex. 1 - Tab A.) Paragraph 2 of the letter explained the basic reasons for the action:

"This action is being taken because your attitude has not been satisfactory during your probationary period. You have been unco-operative in your working relationships with others. In your discussions with fellow employees, you show a lack of tact by becoming argumentative and sarcastic. You have been insubordinate with your supervisor and those placed in the capacity of acting chiefs."

Specific incidents predicated the general charges were listed in paragraph 3 of the letter and delineated further in the attachments to the letter.

3. The plaintiff, through counsel, replied to the charge in a letter dated July 15, 1964, unequivocally denying the charges detailed in the notice. A request was made for an early hearing. (Gov't Ex. 1 - Tab B.)

4. On July 31, 1964, a meeting was held in the office of G. H. Nickell, Deputy Chief, Personnel and Training Office at

which plaintiff made a personal reply to the proposed separation - disqualification action. This personal reply was recorded in writing, signed by plaintiff's attorney and included in the certified record. (Gov't Ex. 1 - Tab C.) At the July 31, 1964 meeting, the proposed separation date was extended from August 3, 1964 to August 17, 1964 to provide ample time for consideration of the written and personal replies.

5. A Notice of Decision by the Commander, Army Weapons Command dated August 17, 1964 and signed by Mr. Harold Sedrell, Chief, Personnel and Training Office (Gov't Ex. 1 - Tab D) was sent to plaintiff informing him that:

"The charges contained in Paragraphs 3, 4, 5 and the attached exhibits A, B, C, and D of the proposed separation-disqualification letter are supported with substantial evidence. After careful consideration of these charges and your personal and written replies thereto, it has been decided that all charges are sustained and warrant your separation-disqualification. Your separation-disqualification will be effected on 18 August 1964.

Plaintiff was advised of his right to appeal the decision within Army Appeals Channels and also of his limited right to appeal to the Civil Service Commission.

6. Plaintiff, on August 18, 1964, the date his separation became effective, notified the Commanding General in writing of his intent to appeal the decision under the applicable regulations (CPR - E2.) (Gov't Ex. 1 - Tab E.)

7. In accordance with Employee Grievance and Appeal Procedures, CFR - E2, a hearing was conducted before Grievance Examiner Frank W. Carlson on September 30, 1964. (Gov't Ex. 1 - Tab F.)

8. The Grievance Examiner recommended, based on an analysis of the charges, testimony, and other evidence, that the action taken in the Commander's Notice of Decision be sustained. (Gov't Ex. 1 - Tab G.)

9. On December 1, 1964, the U.S. Army Materiel Command, Washington, D. C., the reviewing authority, requested from the Grievance Examiner additional information regarding the action so as to enable "a proper adjudication." This information was provided in a 2nd Indorsement which, with its 7 enclosures, was made a part of the certified record. (Gov't Ex. 1 - Tab H.)

10. After review by the U.S. Army Materiel Command, plaintiff was notified by Brig. Gen. William H. Harris, Director of Personnel and Training in a letter dated January 12, 1965, that "it is the decision of this Headquarters that the penalty of dismissal is warranted and your appeal for restoration to duty is denied." Additionally, he was informed of his right to appeal to the Secretary of the Army. (Gov't Ex. 1 - Tab I.)

11. Plaintiff gave notice of his request for review by the Secretary of the Army on January 28, 1965. (Gov't Ex. 1 - Tab J.)

12. The Secretary of the Army, on May 7, 1965, in an order signed by Roy K. Davenport, Deputy Under-Secretary of the Army, affirmed the decision of January 12, 1965, by the Commanding General, U.S. Army Materiel Command, which sustained plaintiff's dismissal and denied his request for restoration. (Gov't Ex. 1 - Tab K.)

13. After final review by the Secretary of the Army, plaintiff submitted on May 25, 1965, a Notice of Appeal to the Director, Chicago Region, U.S. Civil Service Commission, requesting that they conduct an investigation and review of the entire case, reverse the decision, and fully restore plaintiff to his former position. (Gov't Ex. 2, p. 2.)

14. Plaintiff was informed by the CSC on June 2, 1965, that the regulations provided no avenue of appeal to the Commission from the action of an agency terminating an employee during his probationary period for what the agency believes to be unsatisfactory services or conduct. (Gov't Ex. 2, p. 1.)

15. The plaintiff having thus exhausted his administrative remedies filed this action in the District Court for the District of Columbia on October 20, 1965.

/s/
THOMAS A. FARMER
United States Attorney

/s/
ROBERT S. FARMER, JR.
Assistant United States Attorney

/s/
JOSEPH A. FARMER
Assistant United States Attorney

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PLAINTIFF'S POINTS AND AUTHORITIES IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT

Plaintiff opposes defendant's motion as follows:

I. Plaintiff was employed by the U. S. Army Weapons Command at Rock Island, Illinois, from September 13, 1963 to August 18, 1964. His discharge, initiated by his Supervisor, Paul H. Noffke, was based on, among other things, a memo dated January 13, 1964, complaining of a disagreement about initialling a leave card. One of the signers of the memo, Richard Lawrence Milne, who was one of plaintiff's superiors, subsequently testified that on January 13th he had discussed the memo with plaintiff (Def's Ex. 1 F, p. 46). Paul H. Noffke, who also signed the memo, testified that he joined in the January 13th discussion and then "re-evaluated the situation" on January 24th (Def's Ex. 1 F, p. 8). Miss Beverly Linn, Clerk-Timekeeper, testified that the leave card incident occurred after plaintiff had witnessed an accident (Def's Ex. 1 F, p. 38). Miss Faye Kershner, whose affidavit is Plf's Ex. A, and plaintiff, whose affidavit is Plf's Ex. B, state that the leave card incident occurred on a Monday (Kershner), January 27, 1964 (plaintiff) after plaintiff had arrived late to work. He had assisted an accident victim on his way back to Rock Island from Rochelle, Illinois, following a visit to his mother occasioned by the death of his father on Sunday,

January 26, 1964. Miss Kershner remembered that plaintiff's father had died the day before the incident. Plaintiff did not learn about the January 13 memo or the January 24 "re-evaluation" until July 7 when they figured in his discharge (Def's Ex. 1 F, p. 73).

If what plaintiff, Miss Linn, and Miss Kershner say is true, the only conclusion possible is that the January 13 memo was manufactured at some time after January 27th; that both Richard Lawrence Milne and Paul H. Noffke lied under oath about it and their discussion with plaintiff; and that Paul H. Noffke lied about his "re-evaluation" on January 24th.

At the same time, Richard Lawrence Milne was also masterminding trumped-up charges against another Rock Island Arsenal engineer, Paul W. Burkett, whose affidavit is Plf's Ex. C. Mr. Burkett was discharged on September 1, 1964, and reinstated on March 10, 1969, pursuant to an order of the U. S. Court of Claims in Burkett v. United States, 185 Ct. Cl. 631, 402 F.2d 1002 (1968).

In view of the foregoing, all of Messrs. Milne's and Noffke's acts and statements are suspect (ref. Milne's activities in the Burkett case, supra). Both of them testified at length against plaintiff. Everything either of them has said or written about plaintiff is a genuine issue of material fact for summary judgment purposes. Plaintiff's discharge was arbitrary and capricious, or worse, if based on any consideration of the deceptions of his

superiors Milne and Noffke.* Only a full fact-finding hearing in this forum will allow plaintiff the due process to which he is entitled.

II. A motion for summary judgment is inappropriate because there are genuine issues of material fact involved: Whether manufactured evidence and perjured testimony were employed ex post facto in order to effect and sustain plaintiff's discharge from federal employment. A trial of all the facts will be necessary in order to ascertain to what extent Messrs. Milne's and Noffke's deceptions contributed to plaintiff's discharge. Accordingly, a motion for summary judgment must be denied.

III. A motion to dismiss upon the grounds of (1) lack of jurisdiction, or (2) failure to state a claim upon which relief can be granted, must fail for the same reasons. None of the cases cited by defendant holds that a probationary federal employee may be discharged because of a fraud practiced on him by his federal employer. The so-called nonreviewability of federal personnel actions or Civil Service Commission findings does not license any federal employer to punish with impunity. Arbitrary and capricious acts by federal employers and the Civil Service Commission, as in this case, are and must be reviewable by federal courts. In Urbina v. United States, 180 Ct. Cl. 194 (1967) the Court said, "The defect

is that the bases for discharging plaintiff were not contained in, and were different from, those set forth in the charges against him. This constitutes a basic unfairness of such proportion as to warrant invalidating the discharge. (citations omitted)" Also particularly see Wicman v. Updegraff, 344 U.S. 183; Vitarelli v. Seaton, 102 U.S.App.D.C. 316, 253 F.2d 338; McGinty v. Brownell, 101 U.S.App.D.C. 368, 249 F.2d 124; Bailey v. Richardson, 86 U.S.App.D.C. 248, 182 F.2d 46, aff'd 341 U.S. 918; Money v. Anderson, 93 U.S.App.D.C. 130, 208 F.2d 34; and Mulligan v. Andrew, 93 U.S.App.D.C. 375, 211 F.2d 28.

Other U. S. Court of Claims cases that have dealt significantly with these problems are Autera v. United States, 182 Ct. Cl. 495, 389 F.2d 815 (1968); Bennett v. United States, 174 Ct. Cl. 492, 356 F.2d 525, judgment vacated and case remanded 385 U.S. 4 (1966); Blackmar v. United States, 128 Ct. Cl. 593, 120 F.Supp 408 (1954); Chapelle v. United States, 168 Ct. Cl. 362; Cohen v. United States, 181 Ct. Cl. 400, 384 F.2d 1001 (1967); Cohen v. United States, 177 Ct. Cl. 599, 369 F.2d 97 (1966); Conn v. United States, 180 Ct. Cl. 120, 376 F.2d 878 (1967); Gersten v. United States, 176 C. Cl. 633, 364 F.2d 850 (1966); Hanifan v. United States, 173 Ct. Cl. 1053, 354 F.2d 358 (1965); Levy v. United States, 118 Ct. Cl. 106, cert. den. 346 U.S. 931 (1950); Mallow v. United States, 161 Ct. Cl. 207 (1963); McGuire v. United States, 145 Ct. Cl. 17 (1959); Monahan v. United States, 173 Ct. Cl. 734, 354 F.2d 358 (1965); Neal v.

United States, 177 Ct. Cl. 937 (1966); O'Brien v. United States, 148 Ct. Cl. 1 (1960); Shadrick v. United States, 151 Ct. Cl. 408 (1960); and Swaaley v. United States, 180 Ct. Cl. 1, 376 F.2d 857 (1967).

IV. Genuine issues of material fact are as follows:

1. Whether there was a disagreement about plaintiff's initialling a leave card.
2. If so, whether the incident occurred on January 27, 1964.
3. Whether plaintiff saw the Milne-Noffke memo dated January 13, 1964, prior to July 7, 1964.
4. Whether Messrs. Milne and Noffke lied under oath when they said they discussed their memo with plaintiff on January 13, 1964.
5. Whether Mr. Noffke lied under oath when he said he "re-evaluated the situation" on January 24, 1964.
6. Whether the Milne-Noffke memo dated January 13, 1964, was considered by Mr. Noffke in effecting plaintiff's discharge.
7. Whether Miss Beverly Linn lied under oath when she said plaintiff explained his late arrival by saying he had witnessed an accident.
8. Whether Miss Faye Kershner lied under oath when she said the leave card incident occurred on a Monday and that plaintiff's father had died the day before.

9. Whether plaintiff lied under oath when he said the leave card incident occurred on Monday, January 27, 1964, following his giving assistance to an accident victim while en route from his mother's home where he had gone the day before upon notification of his father's death.

10. Whether the Milne-Noffke memo dated January 13, 1964 was manufactured after the fact in order to establish an excuse to get rid of plaintiff.

V. For the reasons stated defendant's motion should be denied.



Byron N. Scott
Attorney for Plaintiff

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A F F I D A V I T

Plf's Ex.

A

STATE OF Illinois

COUNTY OF Rock Island

I, Faye Kershner, having first been duly sworn according to law, depose and say:

1. I was employed at the U. S. Army Weapons Command Headquarters in Rock Island, Illinois, in January, 1964, where I occupied a desk next to that of Mr. Theodore Heck. I frequently

reported the arrival and departure hours on the time cards for a number of fellow employees, including Mr. Heck.

2. I recall the event when Mr. Heck told Mrs. Linn that he would not initial the time card indicating he was two hours late for work. I do not remember the date, but am sure that it was on a Monday morning, and that Mr. Heck told me his father had died the day before. In my presence Mr. Heck told Mrs. Linn that he would not sign the time card. Mrs. Linn replied that in that case she would ask Mr. Noffke to handle the matter. Mr. Heck agreed to this and Mrs. Linn then left the immediate area with the time card. Later in the day Mr. Noffke came with the card to Mr. Heck's desk. They talked for a few minutes out of my hearing.

Further affiant sayeth not.

Faye Kershner
Faye Kershner

Subscribed and sworn to before me this 27 day of January,
1968-1969

Robert T. Meyers
Notary Public

My commission expires October 25-1970.

[Caption Omitted in Printing]
AFFIDAVIT

Plf's Ex.

B

STATE OF ILLINOIS

COUNTY OF ROCK ISLAND ss:

I, Theodore G. Heck, having first been duly sworn according to law, depose and say:

1. My father, Christian George Heck, died on Sunday morning January 26, 1964, at Rochelle, Illinois. As soon as I learned of this I called Paul Noffke, as I did not know whether I would be back at work on Monday. Then I drove from my home in Rock Island to Rochelle, Illinois, to be with my mother, Mrs. Beryl T. Heck. On Monday morning, January 27, 1964, I returned to Rock Island via highways numbered Alt. U.S. 30, U.S. 30, and Illinois 2, leaving Rochelle at approximately 5:30 a.m. and arriving at Rock Island at approximately 9:30 a.m. The roads were icy but passable.

2. On Monday, January 27, 1964, between 6:30 and 7:30 a.m. on highway Illinois 2, approximately five miles from Lyndon, Illinois, I came upon the scene of an accident. A motorist had slid off the icy highway almost into the ditch. I stopped and assisted this man as follows:

We tried to pull his car back onto the highway with my car, but could not get traction. We tried this many times, collecting rubbish, etc. and putting it under our wheels, but to no avail. Neither of us had tire chains. Another man stopped and we tried further using the two cars to pull but with no better success. Spinning the wheels of the car off the road just dug a hole, and on the icy concrete our cars merely slid around. We decided not to try further. The second man said that he would try to find someone with a tractor, truck, wrecker, or at least tire chains. At this point I left them approximately one and three quarters hours after arriving there, and when I got back to Rock Island and to work I was approximately two hours late.

It was on this occasion that I at first declined to initial the time card, which is the subject of Paragraph three, line two, of the Separation-Disqualification letter given to me on July 7, 1964.

Further affiant sayeth not.

Theodore G. Heck
Theodore G. Heck

Subscribed and sworn to before me this 15 day of July,
1965.

Notary Public

My commission expires 7/1/66

[Caption Omitted in Printing]

Plf's Ex.

A F F I D A V I T

C

STATE OF LOUISIANA)
PARISH OF ORLEANS) ss:

I, Paul W. Burkett, having first been duly sworn according to law, depose and say:

1. I was the supervisor of the Small Arms Branch, Production Planning Division, Procurement and Production Directorate, of the U. S. Army Weapons Command Headquarters, Rock Island, Illinois, when Mr. Heck was interviewed for the position he later assumed there.

2. When Mr. Heck arrived for work he was assigned to my branch. He continued there for a few days, then was verbally assigned to the Combat Vehicle Branch under the direction of Mr. Paul H. Noffke. From that time he worked under Mr. Noffke's direction except for the few occasions upon which I was told to give him assignments. Mr. Heck was on my Small Arms Branch personnel roster until February, 1964, or later, mistakenly indicating that he was until then permanently assigned under my direction. Upon occasion he referred various questions to me that Mr. Noffke could not answer.

3. Because of Mr. Heck's almost immediate new assignment I could not give him a full orientation on working for the federal government and the Weapons Command. However, we had several dis-

cussion sessions and tours. I agreed when he was assigned by others to the several training courses he undertook.

4. I felt that Mr. Heck's abilities and qualifications were not being utilized in the assignment under Mr. Noffke, and several times I expressed this to Mr. Milne with the request that he be returned to the Small Arms Branch. I was able to give Mr. Heck encouragement, advice, and assistance in several diverse matters.

5. Mr. Heck was of particular assistance to me by virtue of his quick comprehension, his technical understanding, and his ability to get people to do a job, as exemplified by the rush jobs I assigned to him by permission of the Division Chief, Mr. Milne.

Further affiant sayeth not.

Paul W. Burkett
Paul W. Burkett

Subscribed and sworn to before me this 15th day of July.

1966.

WALTER J. LABRETON
Notary Public, Parish of Orleans, State of La.
My Commission is issued for life.

Walter J. Labreton
Notary Public

My commission expires

at death

[Caption Omitted in Printing]

O R D E R

This cause having come before the Court on defendant's motion to dismiss, or in the alternative, for summary judgment, and plaintiff's opposition thereto, and upon consideration of the motion, the opposition, exhibits, affidavits, and arguments of counsel, and it appearing to the Court that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law, it is by the Court this 22 day of June, 1970

ORDERED, that defendant's alternative motion for summary judgment be, and the same hereby is, granted.

UNITED STATES DISTRICT JUDGE

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NOTICE OF APPEAL

Notice is hereby given this 19th day of August, 19 70, that

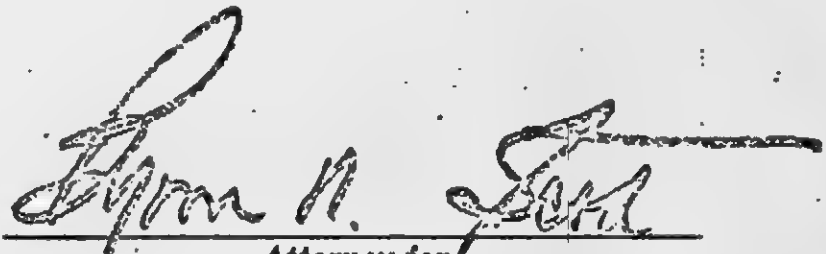
THEODORE G. HECK, Plaintiff,

hereby appeals to the United States Court of Appeals for the District of Columbia from the

judgment of this Court entered on the 22nd day of June, 19 70.

in favor of Defendant,

against said Plaintiff.


Attorney for

Plaintiff

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[GOVERNMENT'S EX. 1]

HEADQUARTERS
U. S. ARMY WEAPONS COMMAND
Rock Island Arsenal
Rock Island, Illinois

LJDA JCN/P35, 1216

XXXXXXXXXXXX-SHIMI-PTM-2441

7 July 1964

SUBJECT: Proposed Separation Disqualification

TO: Mr. Theodore G. Heck
Combat Vehicle Branch
Production Planning Division
Directorate of Procurement and Production
HQ., U. S. Army Weapons Command

1. This letter is to advise you that it is proposed that your separation-disqualification from your position of Industrial Engineer, Job No. 1619, GS-12, \$10,10 per annum, is to be effected on 3 August 1964. You will remain on an active duty work status during this notice period.

2. This action is being taken because your attitude has not been satisfactory during your present period. You have been uncooperative in your working relationship with others. In your dealings with fellow employees, you show a lack of tact by becoming argumentative and sarcastic. You have been insubordinate with your supervisors and those placed in the capacity of acting chiefs. The specific reasons are included in the following paragraphs.

3. Examples of your uncooperative behavior are mentioned in the attached Memos for Record dated 15 January 1964 and 9 February 1964. In Item 1, Exhibit A, you objected because you were required to initial your time card for 16 December, after you had reported late for work. In Item 2, you were insubordinate when you refused to follow the instructions given to you on approximately 27 December 1963 by Mr. H. Hedlock, the Acting Chief of the Combat Vehicle Branch. In Item 3, you were also insubordinate by refusing to follow the instructions given to you by Mr. J. R. Sculley, the Acting Production Planning Division Chief. The incident on 6 January 1964 between yourself and Mr. Sculley is further documented on the Memo dated 6 February 1964, Exhibit B. In Item 4 you became indignant when informed by Mr. Paul Hoffke during the early part of January that you would be charged annual leave for any time used to take your Illinois driver's license examination.

4. The incidents listed in the above paragraph have been discussed with you during the middle of January by Messrs. R. Linn and Paul Hoffke. Since the time of these discussions, your attitude did improve for a period of time, but subsequently your attitude became belligerent and uncooperative. Your lack of cooperation makes it difficult for others to work with you. Fellow employees, Messrs. V. H. Prunski, J. R. Sculley, and Mrs. D. Linn, have stated that they do not wish to work with you because of your sarcastic argumentative

SWERI-PTE-2441

SUBJECT: Proposed Separation Disqualification

7 July 1964

attitude, as documented in part in Exhibits A and B.

5. Your poor attitude is further pointed out in the Memos dated 15 and 16 June 1964, as attached in Exhibits C and D. On 15 June 1964, as recorded on Exhibit C, you were given instructions to contact Mr. Matlett to get information needed for compiling a report on obligations. You explained that this was not part of your job and it became necessary to order you to comply with the instructions. The type of attitude that you displayed on that date cannot be tolerated. On 16 June 1964, as recorded on Exhibit D, you refused to give a fellow employee, Mr. R. Hays, information that he needed in preparing a report. You did not display the proper attitude and even though you were given specific instructions to furnish the necessary information, you were reluctant to cooperate.

6. The position you occupy is of the nature that requires it be filled by a person with ability to get along well with others. You have not demonstrated this ability. The statements in Paragraphs 3, 4, and 5, and the attached Exhibits A, B, C, and D, are considered as grounds for separation-disqualification.

7. You have the right to answer this notice of proposed action personally and in writing and to furnish any affidavits and witnesses in support thereof. Your reply must be received not later than ten (10) working days from the receipt of this letter and must be addressed to Mr. Harold Sedrol, Extension 2-9121, Personnel and Training Office, USA Rock Island Arsenal, Rock Island, Illinois.

8. Your reply will be given careful consideration and a written notice of decision will be furnished to you prior to the effective date of this action.

FOR THE COMMANDER:

4 Attachments

1. Exhibit A dtd 13 Jan 64
2. Exhibit B dtd 6 Feb 64
3. Exhibit C dtd 15 Jun 64
4. Exhibit D dtd 16 Jun 64

PAUL H. KOFFKE

Chief, Combat Vehicles Branch

Copies furnished:-

SWERI-PTE-2441
 SWERI-PTE-2443, 201 file
 AMSWE-PPP-32540

Rec'd 7/17/64
[Signature]

MEMO FOR THE RECORD

13 Jan 1964

Subject: Theodore G. Heck, Industrial Engineer GS-896-12

Recent conduct has indicated an insubordinate and rebellious attitude toward Federal employment by Theodore G. Heck. Examples are listed:

1. Refusing to initial off on payroll card on time charged against him for being late. When initials were obtained, it was done under extreme protest.
2. Refusing to take action on work assigned by acting branch chief.
3. Refusing to perform work assigned by acting division chief.
4. Protesting the leave time which would be charged to him, if time were taken for a driver's test at Rock Island, Illinois.

The Combat Vehicle Branch morale has been hurt by the conflicts and personality problems that have been created by Mr. Heck.

Verbal guidance discussions made with Mr. Heck regarding the problems listed have ended in a belligerent attitude on his part.

Fellow employees both in the Combat Vehicle Branch and other branches have indicated a request for transfer would be initiated by them if they are forced to work with Mr. Heck.

In conclusion, it is recommended that Mr. Heck be separated from the Combat Vehicle Branch.

Paul H. Hoffke
PAUL H. NOFFKE

Ch, Combat Vehicles Branch

With regard to the last paragraph, since Mr. Heck's primary problem is attitude, it is mutually agreed by the undersigned that Mr. Heck will be put on notice as to the above, and that current assignment to Combat Vehicle Branch will be continued thru 24 Jan 64 and the situation re-evaluated at that time.

Paul H. Hoffke
PAUL H. NOFFKE

R. L. Milne
R. L. MILNE

Copy to Mr. T. Heck.

MEMO FOR THE RECORD;

6 February 1964

Mr. Milne notified all personnel in the division by DP that I was to be Acting Chief of the Division in his absence during the period 6 through 8 January 1964. At about 8:30 A. M. on 6 January, Mr. Heck appeared at the office door and said he wanted to see Mrs. Efaw. I informed him she would be back shortly. Within a few minutes Mrs. Efaw returned and talked with Mr. Heck. Shortly thereafter she told me Mr. Heck insisted that she furnish him with a regulation pertaining to engineering change orders. She also said Messrs. Prunsk and Heck had been assigned to participate in a meeting with representatives of other offices later in the day and were expected to review all regulations pertinent to ECO's.

I then spoke to Mr. Prunsk in regard to the forthcoming meeting and asked if he and Mr. Heck were prepared to represent this division at the meeting. He replied that he was familiar with the subject matter but was concerned that Mr. Heck had not reviewed pertinent data that would be discussed. I then told him that I would see Mr. Heck and have him familiarize himself with this material.

I approached Mr. Heck at his desk and asked him if he was prepared to attend the meeting. He said he had not read the existing regulation and that he told Mrs. Efaw to get a copy for him. He said there were enough girls in the office to furnish him with whatever he wanted and if no one gave him the information he would sit at his desk and review what he had before him. I tried to explain to him that it was not the duty of the secretaries, particularly Mr. Milne's secretary, Mrs. Efaw, to supply every piece of paper or article that the men in the division might need. He then became very indignant and said he didn't know who set up the operational procedure, but as far as he was concerned it was Mrs. Efaw's responsibility to provide him with this information and he did not intend to look for this material himself.

I informed him that he was to go into the office and look in the library for the regulation. He immediately said he was not about to do this. I told him I wanted him to listen to me for a minute and he said if I wanted to talk to him I should see his boss. I said that at this particular time I was representing Mr. Milne and it was my responsibility to see that he was prepared for this particular assignment. He became boisterous and I asked him if he would like to go see Major Hanby. He said no, and that he was going to sit at his desk and read the papers he had before him. Several people looked up from their desks as a result of the loudness of the conversation.

I again told him to look in the library for this regulation and if it was not there he could ask Mrs. Efaw to obtain a copy through PPA. I repeated that she was not the secretary for the entire division and that even the secretaries in the branches are not expected to obtain every piece of paper for each man in the branch; however, when properly requested to assist in obtaining information they usually cooperate whenever possible.

Since Mr. Heck did not make any attempt to follow my instructions, I went back to Mr. Milne's office and waited for Mr. Noffke to return to the area to discuss the matter with him. Mr. Noffke informed me that he had encountered difficulty with Mr. Heck on three different occasions and that he would appreciate my writing a memo for the record covering this incident and having a copy placed in the 201 File of Mr. Heck.

Mr. Prunsk was quite perturbed that a new employee had taken such an attitude toward his work. Insubordination of this type is damaging to morale and detrimental to the efficient operation of this division and should not be tolerated.



J. R. SCULLEY
Ch, Artillery Branch
Production Planning Division

Exhibit C

MEMO FOR THE RECORD

15 June 1964

Subject: Ted Heck

The delegation of program responsibility for 1st Destination Transportation charges for Combat Vehicles and Tanks had previously been assigned to Mr. Heck.

In this capacity he was requested to contact AMSWE-CPFG, Mr. Hatlett for information necessary to compile a report on obligations.

He belligerently stated that this was an accountants job and not his and if I insisted that he obtain this information, I would have to order him to do so; this I did.

This type of attitude cannot be tolerated by this branch.

*Paul H. Groppe**Exhibit D*

MEMO FOR THE RECORD:

16 June 1964

Subject: Ted Heck

In the preparation of a verbal (1083) report for AMSWE-PPA, Mr. F. Hays had been delegated the responsibility for compilation of data. After requesting Mr. Heck for information on 1st Destination Transportation, Mr. Hays was informed by Mr. Heck that this was not his job. Mr. Hays informed me of this situation. I contacted Mr. Heck and again stated that he was to obtain this information and to work with Mr. Hays on the report. Reluctantly he agreed to submit the information desired..

Paul H. Groppe

ADOLPH H. KOHLHAMMER
ATTORNEY AT LAW
SAFETY BUILDING
ROCK ISLAND, ILLINOIS
TELEPHONE R. 3474 AND B. 3475

July 15, 1964

Mr. Harold Sedrel, Chief
Personnel and Training Office
Rock Island Arsenal, Rock Island, Illinois

SUBJECT: Proposed Separation Disqualification
SWER-PTE-2441
Mr. Theodore G. Heck

Please take notice that Adolph H. Kohlhammer, 226 Safety Building, Rock Island, Illinois, has been retained by Mr. Theodore G. Heck, to reply to the charges contained in your letter of July 7, 1964, and to attend any and all hearings and present evidence in opposition to the proposed Separation Disqualification of Mr. Theodore G. Heck.

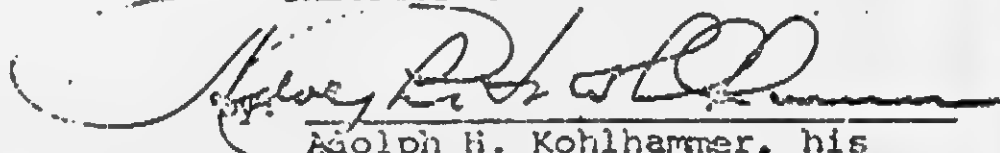
The following reply is made to the charges contained in your letter of July 7, 1964:

1. The subject denies all of the statements contained in Paragraph 2 of said letter and expressly denies that he refused to initial off on the payroll card.
2. The subject denies all of the statements and allegations contained in Paragraph 3 of said letter.
3. The subject denies all of the statements and allegations contained in Paragraph 4 of said letter.
4. The subject denies all of the statements and allegations contained in Paragraph 5 of said letter.
5. The subject admits that his position contemplates getting along with others, but expressly denies all other statements and allegations contained therein.

We demand on behalf of our client an early hearing of the charges made against him and to be confronted by witnesses to support said charges.

We demand on behalf of our client a list of the official rules and regulations depended upon by the complainant and pertinent only to the issues involved in this matter.

THEODORE G. HECK


Adolph H. Kohlhammer, his
Attorney

U. S. ARMY
ROCK ISLAND ARSENAL

ROCK ISLAND, ILLINOIS
61202

IN REPLY REFER TO
SWER- 12A

31 July 1964

Mr. J. M. E. Walsh
Attorney at Law
Suite 200, Safety Building
Rock Island, Illinois 61201

Dear Mr. Walsh:

Enclosed is a written record of the meeting held in my office
31 July 1964. At the conclusion of that meeting we agreed to forward the
copy to you for your client's concurrence. Department of Army Civilian
Personnel Regulation CPR S-1 requires "a written record will be made of a
personal reply and if possible, the signature of the employee obtained as
an indication that he agrees with the accuracy of the record."

Sincerely yours,

1 Incl
Record of Meeting

G. H. Nickell
G. H. NICKELL, Deputy Chief
Personnel and Training Office

GN on hand

JOHN E. WALSH

ATTORNEY AT LAW

SUITE 227 SAFETY BUILDING
ROCK ISLAND ILLINOIS 61201

AREA 309
PHONE 708-3474

August 8, 1964

WJ
10 AUG 1964

PP
8/12
11 Aug 64

Mr. G. H. Mickell, Deputy Chief,
Personnel and Training Office,
U. S. Army-Rock Island Arsenal,
Rock Island, Illinois 61202

Dear Mr. Mickell:

I am herewith enclosing record of Personal reply, which I
have signed as requested. I believe it is a fair and honest statement
of the proceedings.

Signature
John E. Walsh

JES/30

RECORD OF PERSONAL REPLYof Mr. Theodore G. HecktoProposed Separation-Disqualification Action

I. Personal reply was presented to Mr. George H. Mickell, 10:00 a.m., 31 July 1964.

A. Location:

Personnel & Training Office, Rock Island Arsenal

B. Present at the meeting:

1. Mr. Theodore G. Heck
2. Mr. John E. Walsh, Attorney-at-Law
3. Mr. George H. Mickell, Deputy Civilian Personnel Officer
4. Mr. Peter J. Dunn, Personnel Management Specialist

II. Preliminaries to the Personal Reply.

A. Mr. Mickell presented and explained to Mr. Heck and Mr. Walsh a letter which extended the proposed separation date.

1. Date was extended from 3 August to 17 August 1964.
2. Purpose was to provide adequate consideration to the personal reply.
3. Mr. Walsh accepted the letter for Mr. Heck.

B. Mr. Mickell explained generally and briefly purpose and method of personal reply.

C. Mr. Walsh repeated request for a hearing in order to call witnesses and to confront accusers. He referred to two U. S. Supreme Court cases:

1. Green vs McElroy- 1959 360 U.S. 474 3 L ed 79 S ct 1400.
Mr. Walsh briefly read excerpts from the case.
2. Cafeteria workers vs McElroy - 1961.

3. Mr. Walsh then summarized what he thought was the position of the AWC Headquarters regarding the procedures of the personal reply.

- a. He summarized correctly.

- b. He stated he felt our procedure was not correct in view of the decision on the two cases.

- D. Mr. Michell restated our position with regard to the Civilian Personnel Regulations which we must follow. Mr. Walsh indicated he understood.

Mr. Michell asked if everyone was ready to present the reply. Mr. Walsh indicated to Mr. Beck to proceed. The essence of the reply was as follows:

- A. Mr. Beck stated that all charges in the Proposed Separation-Disqualification action are categorically denied.

1. He questioned who defines attitude and what is their competence to judge.

2. He stated that no one advised him when he was hired what his attitude should be.

3. He doesn't understand where he was sarcastic.

4. He stated that he works with a technically trained non-professional group. Even though some of the people, including his supervisor, have graduated with engineering degrees, they are not necessarily professional engineers.

5. Mr. Beck has yet to see an engineering job in his office. He has been doing clerical work which any GS-9 Clerk could do. This was the only major assignment that he had, and this was taken from a GS-11 technician.

- B. Mr. Walsh indicated several times during the meeting that the proposed action was rather harsh and that all charges are denied.

1. He stated that Mr. Beck can correct his attitude if necessary.

2. He stated that Mr. Beck would apologize if necessary.

3. He specifically asked Mr. Beck if he would apologize if he had been sarcastic. Mr. Beck indicated he would.

4. Mr. Walsh spoke about characteristic attitudes held by professional engineers toward non-professionals. Management should be more tolerant of this attitude.

- IV. The meeting concluded with an agreement that a record of the meeting would be prepared and sent to Mr. Walsh for concurrence.

The above is an accurate summary of Mr. Theodore Beck's personal reply to the Proposed Separation-Disqualification action, dated 7 July 1964.

George H. Wickham August 14
 GEORGE H. WICKHAM

John E. White
 acting for GEORGE H. WICKHAM

HEADQUARTERS
S. ARMY WEAPONS COMMAND
Rock Island Arsenal
Rock Island, Illinois
61202

LJD:Poever/102/21126

XXXXXX SWSRI-PTR-2441

17 August 1964

SUBJECT: Notice of Decision

TO: Mr. Theodore G. Neek
Combat Vehicle Branch
Production Planning Division
Directorate of Procurement and Production
HQ., U. S. Army Weapons Command

1. On 7 July 1964 you were issued a proposed letter of separation-disqualification from your position of Industrial Engineer, Job No. 1019, GS-6-12, \$9,980.00 per annum, because your attitude has not been satisfactory during your probationary period.

2. The proposed effective date of your separation-disqualification was changed from 3 August 1964 to 17 August 1964, as indicated in the letter received by your attorney, Mr. John E. Walsh, on 31 July 1964 at the time of your personal reply.

3. The charges contained in Paragraphs 3, 4, 5 and the attached exhibits A, B, C, and D of the proposed separation-disqualification letter are supported with substantial evidence. After careful consideration of these charges and your personal and written replies thereto, it has been decided that all charges are sustained and warrant your separation-disqualification. Your separation-disqualification will be effected on 18 August 1964.

4. You have the right to appeal this decision within the Department of the Army. If you elect to appeal this decision to the first appeal level within the Department of the Army under the provisions of CMA 32, Employee Grievance and Appeal Procedures, your appeal should be submitted any time after receipt of this notice but not later than ten (10) calendar days after the effective date of action. This appeal must be in writing and sent to Brigadier General Roland B. Anderson, Commanding General, HQ., U. S. Army Weapons Command, Rock Island, Illinois.

5. You have the right to appeal this decision to the Civil Service Commission only if you believe the adverse action was taken for political reasons not required by law; or resulted from discrimination because of marital status, sex, or physical handicap. Should you elect to appeal to the Civil Service Commission, your appeal should (1) be in writing in affidavit form; (2) set forth your reason for contesting the action with offer of proof and such pertinent documents as you are able to submit; and (3) be

SWERI-PTE-2441

17 August 1964

SUBJECT: Notice of Decision

submitted no later than ten (10) calendar days after the effective date of this action. Your appeal should be sent to the Director, Chicago Region, U. S. Civil Service Commission, Room 104E, Main Post Office Building, Chicago 7, Illinois.

6. Should you desire further information or assistance in this matter, please contact the Employment and Services Branch of the Personnel and Training Office.

FOR THE COMMANDER:



HAROLD SEDMEL, Chief
Personnel and Training Office

Copies furnished:-

SWERI-PTE-2441

SWERI-PTE-2443, 201 file

AHSWE-PPP-32520

Original of this letter delivered by Timothy P. Davis on 17 Aug 64.

Original of this letter received by LH. Hark on 17 Aug 64.

JOHN E. WALSH
ATTORNEY AT LAW
SUITE 226 SAFETY BUILDING
ROCK ISLAND, ILLINOIS 61201

AREA 309
PHONE 788-3474

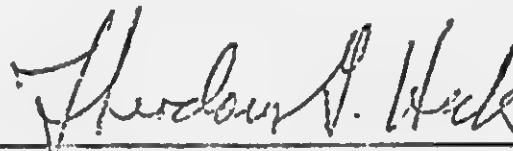
August 18, 1964

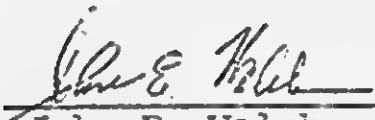
Brigadier General Roland B. Anderson
Commanding General
Headquarters, U.S. Army Weapons Command
Rock Island Arsenal
Rock Island, Illinois

SUBJECT: Notice of Appeal from Decision in respect
to Separation-Disqualification of Mr.
Theodore G. Heck

NOTICE OF APPEAL

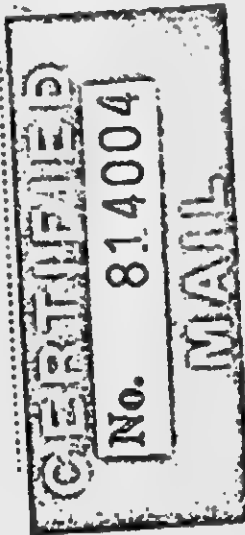
Notice is hereby given that the undersigned,
Theodore G. Heck, does hereby appeal from the Notice
of Decision issued on 17 August 1964 by Harold Sedrel,
Chief, Personnel and Training Officer of the Headquart
U. S. Army Weapons Command, Rock Island Arsenal, Rock
Island, Illinois, under the provisions of CPR E2,
Employee Grievance and Appeal Procedures.


Theodore G. Heck,
Appellant


John E. Walsh
Attorney for Appellant
226 Safety Bldg.
Rock Island, Illinois
Phone: 788-3474

JOHN E. WALSH

WITE 226 SAFETY BUILDING
ROCK ISLAND, ILLINOIS 61201



CERTIFIED MAIL

Brigadier General Roland B. Anderson,
Commanding General,
Headquarters, U. S. Army Weapons Command,
Rock Island Arsenal,
Rock Island, Illinois



Dr. Anderson's
Secretary, Dorothy Reed,
called and advised
that a messenger
picked up some
correspondence
delivered to her.
Howard Reed
Rock Island, Ill.
10 Aug 64

APPEAL AND GRIEVANCE EXAMINATION FOR THEODORE G. HECK

This hearing pertaining to the Theodore G. Heck case is now open at 9:00 A.M. on 30 September 1964 in Building 60, Room 7 of the Training Branch, Personnel and Training Office at Rock Island Arsenal.

This hearing is being conducted by Frank W. Carlson.

By way of introductory remarks, I want to state that the purpose of this hearing is to comply with the request made by Mr. Heck that he as the Appellant be allowed to exercise his right to present evidence orally, in documentary form, by testimony of witnesses, or by Depositions in respect to the recent adverse action of separation-disqualification. This resulted in a Notice of Decision issued to Mr. Heck on 17 August 1964..

For the purpose of record the following people are present and are identified as follows: For the Appellant Mr. Theodore G. Heck, Industrial Engineer, Mr. John E. Walsh, who will be Counsel for Mr. Heck and spokesman for Mr. Heck, Mr. Henry C. Wehking, Position Specialist, Title-Transportation Specialist, Grade GS-12, a witness for the Appellant. For Management Mr. Paul H. Noffke, Supervisor, Industrial Engineer, GS-14, Chief, Combat Vehicle Engineering Branch. He is a management official, and was Mr. Heck's supervisor. Mr. Joseph Lennon, Attorney for Mr. Noffke, Mr. J. R. Sculley, Supervisor, Industrial Engineer, GS-14, Chief, Artillery Branch, as a witness. Mr. V. W. Prunsk, Supervisor, Program Analyst, GS-14, as a witness. Mr. Emery Sedlock, Specialist, Industrial Specialist, GS-13, witness. Mr. Fred Hays, Engineer, Title-Industrial Engineer, GS-12, as a witness. Mrs. Catherine Eflaw, who is assistant to Mr. Milne, Secretary-Steno, GS-5, as a witness, and Mrs. Beverly Linn, Clerk-Timekeeper, a Clerk-Steno, GS-4, as a witness. Mr. Milne is summoned as a witness but is not present for the introductory remarks.

This case consists of the Separation-Disqualification of the Appellant from the position of Industrial Engineer, Job No. 1019, from the Army Weapons Command. Mr. Heck was employed by the Army Weapons Command on 13 September 1963; the Separation-Disqualification was effective on 18 August 1964.

The nature of this case alleges that Mr. Heck had an unsatisfactory attitude during his probationary period, by being uncooperative, lack of the use of tact, was argumentative, sarcastic and insubordinate. The nature of this case does not involve the capabilities of Mr. Heck as an Industrial Engineer.

This hearing will be conducted in the following manner: The Appellant and Management and their representatives will testify under oath. Opening statements specifying what each intends to prove will be made by each side. Management will make the first opening statement. Management's case will be presented first. This includes testimony, evidence, and any witnesses. The spokesman for the Appellant will have the opportunity to question each witness after he testifies. The Appellant's case will next be presented, this also includes the right to present testimony, evidence, and any witnesses, and the spokesman for Management will have the opportunity to question each witness after they finish their testimony. Then a summary will be presented by Management, a summary will be presented

by the Appellant and at the conclusion of the above you will be advised of the subsequent steps in process and this hearing will be closed.

The people who are here as participants have certain rights and they are: To be present throughout the hearing, to question all witnesses appearing and to respond to any adverse evidence; to inspect any and all exhibits that are introduced at the hearing before they are made a part of the record; to testify on their own free of reprisal of any kind; to be assured of protection for witness. In this connection let me explain, this does not include the right to make unsupported statements reflecting adversely upon the honesty or integrity of any individual, and any person may be held accountable for any statements they made.

The people who are here as participants also have certain obligations, and they are: To confine the testimony to matters that are relevant to the case and to avoid discussion of extraneous issues, to introduce all evidence at the hearing. In this connection, it is important that everybody be advised that no pertinent information be withheld. This is because in case of review by higher authority such review is on the basis of original record, unless there is new evidence that was not possessed at the time of the hearing. It is required that testimony be clearly identified as being based upon hearsay or personal knowledge. If a conversation or an occurrence is being testified to, the dates, the place, the persons present at the time this conversation or occurrence took place should be stated. When the opinion of a witness regarding professional or technical matters is received, I will take into consideration the qualifications of the witness, in determining the weight to be attached to the evidence. Documentary evidence introduced as exhibits will be shown to all persons in attendance before being received into evidence.

I think this next part is quite important, because it is a little unusual to have two attorneys here. While this is a formal hearing, be advised that legal rules of evidence used in court will not be observed. This concludes my introductory remarks. All people who are here as witnesses please retire to the chairs in the hall.

Before receiving evidence, the following facts and issues have been established: As a result of the adverse action involved in this case, Mr. Heck was separated 18 of August from his position as Industrial Engineer, also Mr. Heck seeks to be reinstated to that position as Industrial Engineer, and in his reply he has denied that statements in the letter of 17 July 1964, Subject: Proposed Separation-Disqualification, which in turn resulted in his letter of Notice Of Decision, dated 17 August 1964. Facts of record which have previously been established and agreed to by both sides are only one, that it is required that this position be filled by a person with the ability to get along with others. Issues which remain to be clarified are: The payroll card problem, insubordination, in refusal to follow instructions from the Acting Branch Chief, insubordination in refusal to follow instruction from the Acting Division Chief, the charges of being uncooperative, lack of the use of tact, being argumentative, and sarcastic.

The hearing will be governed by the following rules: The sequence of events outlined in my introductory remarks will prevail. There will be only one spokesman for the Appellant, regardless of the fact that there is more than one person here, and there will be only one spokesman for Management. Each spokesman is responsible for the conduct of the group he represents, and no one of either group may speak without the permission of his spokesman. Spokesman will address me and receive permission to proceed, this of course is to keep only one conversation at a time. Spokesman may question witnesses but courtroom procedure will not be followed. Spokesman may object to clearly irrelevant material, but no technical objections will be allowed. Classified documents will not be considered during this hearing. As presiding officer; I will control this meeting and take whatever action is necessary to insure an equitable and orderly expeditious hearing and all parties will abide by my decisions. With this we are ready for the opening statements. Management will make the first opening statement, and you will make it, I presume, Mr. Lennon. We will first administer the oath. Do you swear that the testimony that you are about to give in this case is the truth, the whole truth and nothing but the truth, so help you God?

Mr. Lennon: I do.

Mr. Carlson: Of course you realize that you are bound by this oath for the balance of the hearing. Will you please proceed?

Mr. Lennon: Management's case is very simply to re-establish the charges as outlined in the letter of Separation, 7 July 1964. The Separation-Disqualification was based entirely upon the items that are set forth in the 7 July letter and referred to in the actual letter of Separation. Mr. Heck has through his attorney denied these items one by one, and it is the feeling of management that while the denial would be proper in a court of law, it would be equivocation to argue about whether or not it would be proper here. We are perfectly willing and think it only fair that we bring the people and give Mr. Heck a chance to ask them about the materials upon which we relied for our act. We will introduce no new evidence and the basic testimony from each witness will be strictly limited to management's point of view as to the charges set forth in the 7 July letter, and confirmed in the actual Separation letter of, I missed the date on that here, but anyway the final letter of separation on the 17th of August, I believe.

Mr. Carlson: Does that conclude your opening statements?

Mr. Lennon: Yes, that concludes my opening statements.

Mr. Carlson: Mr. Walsh.

Mr. Walsh: Mr. Examiner, on behalf of the Appellant, Mr. Theodore G. Heck, it will be our purpose to present evidence to show that Mr. Theodore G. Heck assumed his work at the Arsenal between 11 September 1963 and 18 August 1964 as an Industrial Engineer. That he was assigned work which was not within the scope of his training or ability and any difficulty which has arisen between Management and the Appellant is due to improper person placement rather than any of the

charges made in the supporting documents attached to the letter of Separation-Disqualification on the 17th of July 1964. We will attempt to prove that while none of the documents attached to the letter, 7th of July 1964, are under oath or have been verified we have generally denied each of the allegations contained in the charges set forth in the letter. The record will further show on behalf of the Appellant that there is no dispute on the profession capabilities, and admittedly that it does not involve lack of capabilities, as an Engineer. That if any fault does arise from the evidence or the charges that it is based upon a twofold fault on the part of Management as well as any fault on the part of the Appellant. On behalf of the Appellant, I further wish to state that it is our view that under the charges, under this hearing the grievance examiner, within his authority should recommend reinstatement of Theodore G. Heck for the reason that a great portion of the statements contained by the witnesses and attached to the letter of 7 July 1964 is based upon hearsay. That none of the statements are in affidavit form as required, under the rules promulgated by the Headquarters of the United States Army.

Mr. Lennon: Would you quote that rule please?

Mr. Walsh: Well, as I understand it, such a rule is set forth in Rules and Regulations, promulgated between 22 June 1962 and 3 February 1964 by the Headquarters of the Department of the Army, under Grievance and Appeals procedures. Could we shut the recorder off? For a moment please?

Mr. Carlson: Are we ready to proceed? Now we are ready for the Management's case, Mr. Lennon will you introduce your first evidence and witnesses to support it please?

Mr. Lennon: My first witness for Management will be Mr. Noffke. I will ask Mr. Noffke to verify statements made in the proposed Separation-Disqualification letter of 7 July and statements that were submitted at that time as supporting documents. There is one statement that I don't have, and that is the statement from 9 February in reference paragraph three.

Mr. Carlson: May I inject somethin here, I noticed this too, when I went through the file, there is a 6 February memo for record and everyone that I contacted on this indicates to me that this is a typographical error. The 6 February memo for record is the one that is referred to as 9 February.

Mr. Lennon: Mr. Noffke, in your of Separation and I will read directly from paragraph three of the letter dated 7 July, Proposed Separation-Disqualification, you are sworn, no, we didn't swear the witness.

Mr. Carlson: No, not yet, are you ready for Mr. Noffke to testify?

Mr. Lennon: Yes.

Mr. Carlson: Will you (Mr. Noffke) raise your right hand. Do you swear that the testimony you are about to give in this case is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Noffke: I do.

Mr. Carlson: You recognize that you are bound by this (oath) throughout the hearing?

Mr. Noffke: Yes Sir.

Mr. Carlson: You may proceed then.

Mr. Lennon: Would it be proper to warn the witnesses on their rights under the Fifth Amendment, that they don't have to incriminate themselves?

Mr. Carlson: We can do that, you can be advised that -

Mr. Lennon: Just a moment, if there is no objection, I would suggest that inasmuch as all witnesses are out there that if this is alright with you that we bring them all in and swear them all at once.

Mr. Carlson: Is this agreeable to you, Mr. Walsh? (Mr. Walsh nodded his head in agreement) I think this is a good idea.

Mr. Lennon: And do remind them of their rights under the Fifth Amendment.

Mr. Carlson: Will you raise your right hands please? Do you swear that the testimony you are about to give in this case is the truth, the whole truth and nothing but the truth, so help you God?

Messrs. Sculley, Prunsk, Sedlock, Hays, Mrs. Efaw, Mrs. Linn, Mr. Heck: I do.

Mr. Carlson: You recognize that you are bound by this oath throughout the course of this hearing, also that participants and witnesses except those outside of the official jurisdiction of the U. S. Army will be advised that except for such refusal as based on the grounds of self-incrimination, refusal to testify in properly authorized hearings may constitute grounds for disciplinary action. Now, Mr. Lennon, I believe we are ready to proceed.

Mr. Lennon: Mr. Noffke, in the proposed Separation-disqualification letter of 7 July 1964, paragraph three, you state a specific reason for the proposed act that examples of, I am quoting now, examples of your uncooperative behavior are mentioned in the attached memos of record dated 13 January 1964 and 9 February 1964 there is nothing in the record to as far as a memo of 9 February 1964. Can you explain this?!

Mr. Noffke: I would imagine that 9 February 1964 is a typeographical error since the memo for record dated 6 February 1964 is signed by Mr. Sculley is the only evidence listed for February.

Mr. Lennon: The memo for record dated 13 January 1964 is a copy of which is attached and is part of the official record in this case and was submitted to Mr. Heck in the proposed action is signed by you. Is that correct?

Mr. Noffke: Yes sir.

Mr. Lennon: Mr. Noffke, would you read this into the record, please?

Mr. Noffke: Memo for Record, Subject: Theodore G. Heck, Industrial Engineer, GS-896-12, 13 January 1964. Recent conduct is indicated as insubordinate and rebellious attitude toward Federal employment by Theodore G. Heck, examples are listed. One, refusing to initial off on payroll card on time charged against him, for (when) being late. When initials were obtained, it was done under extreme protest. Number two, refusing to take action on work assigned him by Acting Branch Chief. Three, refusing to perform work assigned by Acting Division Chief. Four, protesting leave time which would be charged to him for taking a drivers test at Rock Island, Illinois. The Combat Vehicle Branch has been hurt by the conflicts and personality problems that have been created by Mr. Heck. Verbal guidance discussions made with Mr. Heck regarding the problems have ended in a belligerent attitude on his part. Fellow employees both in the Combat Vehicle Branch and other Branches have indicated a request for transfer to be initiated by them if they were forced to work with Mr. Heck. In conclusion, it was recommended that Mr. Heck be separated from the Combat Vehicle Branch. Signed Paul H. Noffke, Chief, Combat Vehicle Branch. Do you wish me to --

Mr. Lennon: Yes. It is all part of the record.

Mr. Noffke: With regard to the last paragraph, it says Mr. Heck's primary problem is attitude, it is mutually agreed by the undersigned that Mr. Heck will be put on notice as to the above and a current assignment to the Combat Vehicle Branch will be continued to the 24th of January 1964, the situation re-evaluated at that time. Signed: Paul H. Noffke and R. L. Milne. Copy to Mr. T. Heck.

Mr. Lennon: Mr. Noffke, item one, refusal to initial off on payroll card on time charged against him for being late. Was this something that happened in your presence?

Mr. Noffke: No sir.

Mr. Lennon: Do you know in whose presence?

Mr. Noffke: It was in the presence of Mrs. Beverly Linn.

Mr. Lennon: Mrs. Beverly Linn. On item two, refusing to take action on work assigned by Acting Branch Chief. Was that in your presence?

Mr. Noffke: No sir.

Mr. Lennon: Whose presence was it?

Mr. Noffke: Mr. Sedlock.

Mr. Lennon: Item three, refusing to perform work assigned by Acting Division Chief.

Mr. Noffke: This was in the presence of Mr. Sculley.

Mr. Lennon: Presence of Mr. Sculley. Four, protesting leave time which would be charged to Mr. Heck if time were taken for a drivers test at Rock Island, Illinois. Was that in your presence?

Mr. Noffke: Yes sir.

Mr. Lennon: Would you briefly tell the examiner what happened?

Mr. Noffke: In this case, Mr. Heck came to me requesting time off to go to Rock Island to take the driver examination test and I told him that I would check with my superior since I am new in the service. I checked with Mr. Milne, he indicated that Mr. Heck had been here long enough that he had accrued annual leave time and that annual leave should be charged for this purpose.

Mr. Lennon: Did you relay this information to Mr. Heck?

Mr. Noffke: I did sir.

Mr. Lennon: What was his reaction?

Mr. Noffke: He thought this unfair and just generally didn't agree with the decision.

Mr. Lennon: By didn't agree, would you explain a little more by what you mean by didn't agree, in other words, what was the nature of his disagreement.

Mr. Noffke: Well, he felt that it was unfair that we were being prejudicial against him that other employees were taking time off and that he felt that he should be entitled to one hour's leave or so to go over to Rock Island for his drivers examination.

Mr. Lennon: Was this particular instance carried any further?

Mr. Noffke: No sir.

Mr. Lennon: In the last paragraph, the additional note with regard to the recommendation that Mr. Heck be separated from Combat Vehicle service, you say that "With regard to the last paragraph since Mr. Heck's primary difficulty was attitude it is mutually agreed by the undersigned, this is signed by Mr. Noffke and Mr. Milne, Mr. Heck will be put on notice as to the above and current assignment to Combat Vehicle Branch will be continued through 24 January 1964, and the situation re-evaluated at that time." Would you tell us, was this done?

Mr. Noffke: Yes sir.

Mr. Lennon: Did you do it?

Mr. Noffke: Yes sir.

Mr. Lennon: Or did Mr. Milne?

Mr. Noffke: Three of us had discussion.

Mr. Lennon: By the three of us you mean - ?

Mr. Noffke: Mr. Heck, Mr. Milne, and myself and told Mr. Heck that he was on a probation period.

Mr. Lennon: Was this as of the date?

Mr. Noffke: Yes, this was as of 13 of January, and as of the 24th of January, we re-evaluated the situation, Mr. Heck did improve his attitude, and his actions and so we left everything as is.

Mr. Lennon: I believe that is all for Management.

Mr. Carlson: Before we proceed, this evidence that you (Mr. Walsh) are using, you have seen it and you are aware of the content.

Mr. Walsh: Yes, I have been reading from it, sir.

Mr. Carlson: I'm afraid I neglected to offer you the opportunity to inspect this before we started.

Mr. Walsh: No, I would have objected.

Mr. Carlson: I was sure that you had it, this poses no problem?

Mr. Walsh: No.

Mr. Carlson: Are there any questions?

Mr. Walsh: Yes, may I ask this witness a question or two, Mr. Examiner?

Mr. Carlson: Yes sir.

Mr. Walsh: Mr. Noffke, how long have you been in the service?

Mr. Noffke: I joined the Civil Service here at Rock Island Arsenal Weapons Command in September 1964, the exact date I think is the third of September 1964.

Mr. Walsh: In September 1963, you mean?

Mr. Noffke: Yes, 1963.

Mr. Walsh: What was your work prior to that time?

Mr. Noffke: Prior to that time, I was Chief, Industrial Engineer at the Bendix Corporation for seven years, I was plant superintendent Electric Spray Position,

Sheboygan, Wisconsin. We had three hundred and fifty employees there, and I have been on management side, graduated from Purdue. I was Air Force Deputy Chief of Small Arms Branch for the Air Force at Wright Field.

Mr. Walsh: This is your first time though with this particular entity, the Weapons Command?

Mr. Noffke: The Weapons Command, yes sir.

Mr. Walsh: And you have been with them since September 1963?

Mr. Noffke: Yes sir.

Mr. Walsh: Here at Rock Island Arsenal?

Mr. Noffke: Yes sir.

Mr. Walsh: What is your title?

Mr. Noffke: My title is Chief of Combat Vehicle Branch of the Production Planning Division.

Mr. Walsh: Now, is the Weapons Command separate from and distinct from the Headquarters of the Arsenal? Are there two separate entities on the Island?

Mr. Noffke: Yes sir.

Mr. Walsh: What are they?

Mr. Noffke: Well, you have the U. S. Weapons Command which is the subordinate to the Army Materiel Command in Washington and the Weapons Command in turn has three subordinate Arsenals, Springfield Arsenal, Watervliet Arsenal, and Rock Island Arsenal.

Mr. Walsh: You have a Commanding General in charge of the entity in which you are affiliated?

Mr. Noffke: Yes sir.

Mr. Walsh: Who is that?

Mr. Noffke: That is Brig. General Roland G. Anderson.

Mr. Walsh: Now the only complaint that you have against the Appellant is the incidence concerning a request to take time off to take a drivers test. Is that correct, sir? Well, he can say yes or no.

Mr. Noffke: Not entirely.

Mr. Walsh: Well, is there any other incident that of which you have personal knowledge?

Mr. Noffke: The end results of the first evidence presented here in regard to the signing of the card for the payroll card the initialing of the payroll card.

Mr. Walsh: It was confined to the three incidences of Mr. Sedlock, Mrs. Linn, and Mr. Sculley and yourself, is that right?

Mr. Noffke: Yes.

Mr. Walsh: There are four things that you have in mind?

Mr. Noffke: Right.

Mr. Walsh: Against this man. But the only thing of which you have personal knowledge is the one, the fourth item, in the memo of 13 January 1964, concerning the time to go take a drivers license, is that correct? Is that a fair statement?

Mr. Noffke: It all depends on how deeply you want to get involved. As Branch Chief I am directly involved in all incidences. For instance, this memo for record 15 June 1964 when I had to directly order him to go to the Programs Branch for information for the First Destination Transportation Program, I was directly involved in this. I was directly involved in, not directly involved, but I talked to Mr. Heck on the problem on the 16th of June 1964, when Mr. Hays, a fellow employee, was delegated the responsibility for preparing a 1083 report. Mr. Heck refused to cooperate with Mr. Hays in the preparation of this report even though the program was assigned to him for the First Destination Transportation Charges.

Mr. Walsh: And the only other items are in addition to time to go and take the drivers license are the incidents on June 15 and June 16, is that right, sir?

Mr. Noffke: Would you repeat the question, sir?

Mr. Walsh: The only incidents other than going to the drivers license for an hour, the only other incidents of which you have some knowledge are the ones on June 15 and June 16?

Mr. Noffke: By knowledge, I have knowledge of all of them.

Mr. Walsh: Are there any other charges of what you are bringing forth?

Mr. Noffke: No sir.

Mr. Walsh: It is confined to those kind of things?

Mr. Noffke: Yes sir.

Mr. Walsh: Now where did this conversation take place with respect to going to the drivers license station?

Mr. Noffke: It took place in our Branch.

Mr. Walsh: Who was present at that time?

Mr. Noffke: Mr. Heck and myself.

Mr. Walsh: Who was his direct superior, his immediate superior?

Mr. Noffke: I am.

Mr. Walsh: What was the nature of that request, was that an unusual request?

Mr. Noffke: Not anymore unusual than taking time off to go fishing or something like that, no sir.

Mr. Walsh: No, nothing unusual about it was there? It was perfectly legal?

Mr. Noffke: The only thing unusual about it was that he thought it should be granted free to him.

Mr. Walsh: Um-huh. Well, it was a matter of determining whether it should be charged to leave time or whether he should be granted an hour to go to 23rd Avenue in Rock Island and take a license test, is that correct?

Mr. Noffke: No sir, leave time, he felt that he should not be charged leave time for this action.

Mr. Walsh: Well, there was an honest dispute over that fact was there not Mr. Noffke in all fairness?

Mr. Noffke: Yes, to a certain degree, right.

Mr. Walsh: Yes, that is if you were to inquire yourself of a superior as to whether or not you get an hour off to take a legal test, would you think there was anything unusual about that?

Mr. Noffke: If it was taken in a usual term of voice conversation, no, sir. When the voice -

Mr. Walsh: You say there was a voice defect here somewhere along the line?

Mr. Noffke: It seems to be, yes sir.

Mr. Walsh: What kind of a voice defect?

Mr. Noffke: A high inflection of the voice, which would cause consternation throughout the Directorate and Division.

Mr. Walsh: Did he use any bad language to you?

Mr. Noffke: Not to me, no.

Mr. Walsh: Was he gentlemanly in his presentation of the request?

Mr. Noffke: No sir.

Mr. Walsh: What did he say?

Mr. Noffke: The direct words I don't remember, sir.

Mr. Walsh: Well, you are charging this man so that he is losing a job which is worth \$9,980 dollars a year, what did he say?

Mr. Noffke: He said I don't think I should be charged this, other people take time off and with a high inflection of voice and people turning around, this is very indicative of the whole procedures which we have against Mr. Heck.

Mr. Walsh: That was the substance of the request made by Mr. Heck, is that correct?

Mr. Noffke: Yes sir.

Mr. Walsh: And nothing else?

Mr. Noffke: No sir.

Mr. Walsh: And did he eventually go to take the test?

Mr. Noffke: I don't know, sir.

Mr. Walsh: Did you have any objection to his taking the test of that type?

Mr. Noffke: No sir.

Mr. Walsh: Do you know how long he was gone if he did take the test?

Mr. Lennon: The man has already testified that he doesn't know whether he took the test or not. I'm going to object here. As we said at the start of these hearings, this is not a court of law. Our witnesses are coming in and is our intention for them to testify to the things from which this action is based, we're limited to that. I am strenuously going to object that we are not going to have this browbeating and this intent to make these men out as liars. This man is a manager. It is his prerogative (end of tape). Basically, the point I'm trying to make is that it is unhappy when we have this type of situation. There is nobody who is here of his own volition as far as management is concerned, we had to demand that people come over and each one of them has reluctantly put himself in the position where he has to give testimony one way or the other. In cases like this, Mr. Noffke is a supervisor, as such he has responsibilities towards management, and we think it is prerogative of management. I think it is clearly set out in the rules under which the hearing is proceeding that he has made charges and he has followed through on them, he is subject to questioning by Mr. Heck, and his attorney on what is in those statements to explain them the best way that he can, but I am going to object to this courtroom tactic of trying to put words in his mouth, or take them out

for otherwise what I call browbeat Mr. Noffke or any other witness for management.

Mr. Walsh: It was not the intention that we do this. We want to do this expeditiously and fairly. Mr. Examiner, I don't think I have intended this as browbeating, I am merely trying to get at the facts. As I understand it, I have the right to cross-examine.

Mr. Carlson: We're not necessarily too concerned with the amount of leave or the kind of leave, but the fact that it was authorized leave, and it would seem that we could stick a little closer to the issue.

Mr. Walsh: Well, am I foreclosed from examining the witness further?

Mr. Carlson: Unless you have some further questions.

Mr. Walsh: I would like to ask this question concerning this subject. It was the inflection of Mr. Heck's voice, Mr. Noffke, that caused you to make this item a charge against him. Is that correct?

Mr. Noffke: No, sir, not only his voice. He has been with us long enough to indicate that he knows the rules and regulations of the Civil Service procedures of annual leave and this was only one case out of numerous cases mentioned here in regards to reasons of separation.

Mr. Walsh: Well, it was the reason for this particular item, number four? That's what I am getting at. The inflection of the voice.

Mr. Noffke: The indignation that was raised, right.

Mr. Walsh: Now, the letter of the 15th of June 1964 that was a matter between Mr. Heck and Mr. Hatlett?

Mr. Noffke: That was in regards to Mr. Heck and myself. Mr. Hatlett was only concerned.

Mr. Walsh: What happened that time?

Mr. Noffke: As indicated here, Mr. Heck was assigned the responsibility of programming the First Destination and Transportation Charges through Combat Vehicle and Tanks. In this capacity, he was requested to contact Mr. Hatlett for some information to file a report for obligations. Mr. Heck stated that this wasn't his job, that he was hired as an Industrial Engineer and that this was an accountant's job, that he wasn't about to do this. I said, well, you are assigned to the program, you should know where your funds are, what's been obligated, what's been funded, and he said, well, I'm not about to do this unless you order me to do it. I said, well, if that's the case, I'm ordering you to go over and see Mr. Hatlett for this information.

Mr. Walsh: And then did he follow the order?

Mr. Noffke: He followed the order, but very -

Mr. Walsh: Well, he followed the order, sir.

Mr. Noffke: Yes sir.

Mr. Walsh: What was who hired Mr. Heck to begin with?

Mr. Carlson: I'm not sure that this is pertinent to the thing that we are after here. I fail to see any connection between the two.

Mr. Walsh: What was his job? That is, Mr. Heck's.

Mr. Noffke: His job was Industrial Engineer, GS-12. There is a job description that specifies in complete detail what his job functions are.

Mr. Walsh: But he was actually working in the transportation department, was he not?

Mr. Noffke: No, sir, he was working in Combat Vehicle Branch. We have the responsibility for transportation of Tanks and Combat Vehicles.

Mr. Walsh: Did his work entail engineering work in that department?

Mr. Noffke: Yes, sir, as required.

Mr. Walsh: In any event, to your order of June 15, 1964, he follow your order?

Mr. Noffke: Yes sir.

Mr. Walsh: And he did the work correctly?

Mr. Noffke: Yes sir.

Mr. Walsh: With respect to the subject contained in 16 June 1964, were you present on that matter?

Mr. Noffke: After Mr. Hays informed me of what had taken place.

Mr. Walsh: And did you give an order there?

Mr. Noffke: No, sir, I had a talk with Mr. Heck.

Mr. Walsh: What was the conversation?

Mr. Noffke: I told him he was supposed to obtain this information with Mr. Hays and work together as a team; this is a team effort in a Branch.

Mr. Walsh: Was this repetition of the memo contained in the memo 15 June 1964?

Mr. Noffke: No-sir.

Mr. Walsh: It was a new matter completely?

Mr. Noffke: Yes, sir, a new matter completely. It happened a day later.

Mr. Walsh: Was the information sought in existence?

Mr. Noffke: The matter that was required for the 1083 report, is that what you are saying?

Mr. Walsh: Yes.

Mr. Noffke: Was this available, yes, sir, it was available.

Mr. Walsh: And was the information that was sought on the order of June 15 in existence?

Mr. Noffke: Yes sir.

Mr. Walsh: And you contend that they were separate and distinct subject matters?

Mr. Noffke: At this time, I am not exactly sure. I know that on a 1083 report we have obligations to get, we also have forecasts to get and notice of awards. This Memo for Record, 16th of June, was prepared only for the fact that Mr. Heck would not work with his fellow employee and did so under extreme protest.

Mr. Walsh: Well, you are not answering the question. Was a repetition contained in the subject matter of 15 June and the matter contained in the matter of 16 June 1964?

Mr. Lennon: Again I'm going to have to object. The reason for the separation is the man's attitude, we're not talking subject matter whether or not he did the job as far as the mechanical job is concerned, is not the issue. Mr. Noffke has testified that on these two occasions, aside from the subject matter, the man refused, became belligerent, when he was requested then ordered to perform his assigned duties and as far as management is concerned this is the only thing that we feel we need in the record. All this examination as to whether the subject matters were related or otherwise involved. I think it has been established that they were two separate incidences, they were two separate orders, the man did not obey the directions, he had to be ordered and as far as we're concerned, the cross-examinations should be limited.

Mr. Carlson: Let us proceed. We can when we have the transcript weight and balance this thing and establish this correlation, if this is necessary.

Mr. Walsh: Well, it has a bearing if there was a repetition of the second request by two people and I think that it is pertinent, but I don't want to irritate the Examiner in this matter.

Mr. Lennon: Let me make my position clear. That I voice objections doesn't mean that it cannot go into the records. I am simply trying to state management's position, it isn't personal or anything else. It is simply that I am arguing that this type of or as far as we're concerned it is not appropriate, let us say.

Mr. Walsh: This subject matter, 15 June 1964, was an accounting matter, was it not?

Mr. Noffke: It was information which was required for the 1083 report for obligations which was Mr. Heck's responsibility to obtain.

Mr. Walsh: What is a 1083 report?

Mr. Noffke: A 1083 report is a report that is sent to Washington AMC levels and ties in with the actions over a million dollars. So much money is funded and so much money is forecasted and so much money is actually awarded, and so much money is obligated, dates of forecast are listed and all the awards to be made with a fixed price, cost plus fixed fee, depending on what kind of contract, etc.

Mr. Carlson: It would appear that the detail that we're going into as far as the 1083 again seems a little bit superfluous. We have established that the 1083 is a requirement in this area as workload. And as we stated when we started here that this is not related to his ability as an Industrial Engineer, but this is a question of attitude. Can we proceed, please?

Mr. Walsh: Yes. What is the function of the Programs and Administrative Office of the Procurement and Production Directorate? In regard to reports and accounts.

Mr. Carlson: Again I don't see the relationship between this and what we are trying to achieve. Why do you ask this, Mr. Walsh? What is the connection between this and what we're after?

Mr. Walsh: Well, the reason that I am going into this matter in detail is the fact that Mr. Noffke was new in this work. He admittedly came to the Weapons Command in September 1963 about the same time that Mr. Heck did. Any difficulty over taking orders might have been misinformation on the part of Mr. Noffke. As to what was actually to have been done by Mr. Heck and that possibly orders were arbitrary and unreasonable. This man was hired as an Engineer and found himself in the transportation or Combat Vehicle Department, he was not doing Engineering work. I think it is important to test the knowledge of this witness as to what he requires of a man. And whether or not he has the ability to give an order. If it was an arbitrary order the man had a right to refuse it the same as he would in the Army.

Mr. Lennon: Management just can't go along with this at all. There is just no question this is basic.

Mr. Carlson: So far, I see no evidence here that what was requested here was misunderstood. Is this what you are coming to?

Mr. Walsh: Well, I think we are entitled to have an explanation of this man as to what kind of a report he wanted. What all of these things were for. Was the information that he seeks or that he sought at that time in existence.

Mr. Carlson: This has been established. It has been established that it is a requirement of the area. If you're after, was there a misunderstanding? Was it plainly given to him? What was required? This is another thing. To get into the detail of what the reports consist of and the requirement for the Branch to perform this is extraneous.

Mr. Walsh: Was there a misunderstanding, Mr. Noffke, between you and Mr. Heck as to what was to be done?

Mr. Noffke: No sir.

Mr. Walsh: Beg pardon?

Mr. Noffke: No sir. In regards to the initial assignment of the job, is this what you are referring to?

Mr. Walsh: No, a misunderstanding of 15 June 1964 as to what he was to do before you gave this order.

Mr. Noffke: No, sir, it was brought out in the regulations to how the 1083 report was to be prepared.

Mr. Walsh: What regulation was it under?

Mr. Noffke: Gee, I don't know the regulation number as far as -

Mr. Walsh: Was this regulation known and available to Mr. Heck?

Mr. Noffke: Yes, sir, as far as the 1083 was concerned.

Mr. Walsh: Well, the detailed preparation of such a report which would go to Washington concerning financial obligations certainly would have to be prepared by bookkeepers and accounts, isn't that right?

Mr. Noffke: No sir.

Mr. Walsh: You mean that he would personally have to have that in his file?

Mr. Noffke: We are responsible for the programs assigned to us on a 1083.

Mr. Carlson: I think we should get one thing here clarified. It seems like we keep coming back to this and I have the feeling that this is what we are going to focus on. It appears, Mr. Walsh, that we are heading away from the charges contained in the notice of decision as opposed to the kind of work that he performed in relation to what he thought he should have been performing. Is this what you are heading toward?

Mr. Walsh: Yes, to a great extent, I think that.

Mr. Carlson: I think that we ought to clarify that point for this reason. It is management's responsibility to assign workloads, this is a basic management responsibility. Now, if we are talking about the kind of workload that is assigned in relation to job description this is another thing, but this is not entirely the case that we have here. And it would appear to me that we could steer away from that and stay with the charges that we have here. We could cover much more ground. I would request that you do that.

Mr. Walsh: Alright. I think that is all for this witness.

Mr. Carlson: Thank you. Mr. Lennon, do you have additional evidence or additional witnesses that you would like to call?

Mr. Lennon: Yes, I would like to call Mr. Emery Sedlock.

Mr. Carlson: O.K. Would you get him Paul, please? Emery, you have been previously sworn as a group, so we can proceed.

Mr. Lennon: Will you state your name, your position, length of time you have been with the Civil Service?

Mr. Sedlock: My name is Emery Sedlock, I am a GS-13 Industrial Specialist, and I work in the Procurement and Production Directorate.

Mr. Lennon: How long have you been in the Government service, Mr. Sedlock?

Mr. Sedlock: Between fourteen and fifteen years.

Mr. Lennon: How long have you been with the U. S. Army Weapons Command and it's predecessor?

Mr. Sedlock: Since May of 1955.

Mr. Lennon: Could you tell us your position on 27 December 1963?

Mr. Sedlock: I was in the Acting Chief of the Combat Vehicle Branch of the P & P Directors Office.

Mr. Lennon: Do you recall an incident on or about the 27th of December 1963 in which you as Acting Branch Chief, is it? Division Chief or Branch Chief?

Mr. Sedlock: Branch Chief.

Mr. Lennon: Branch Chief in which Mr. Heck was involved?

Mr. Sedlock: Yes, I do.

Mr. Lennon: Would you briefly tell the Examiner what happened in this instance?

Mr. Sedlock: I was developing some certain data which was required for our FY 65 forecast, forecasting of programs, and I needed data concerning First Destination and Transportation. I went to Mr. Heck who had the responsibility for First Destination Programs, and I asked him if he would secure this data for me. I told him that I needed the data in approximately two weeks, two weeks to three weeks. About ten days later I went down and asked Mr. Heck how he was coming along with this data that he was to be securing and he said that he did not have it at that point or at that time. I asked him when he would have it, he said he did not know. I asked him again when he would have it, he says I do not know. And I repeated, what do you mean, I do not know and he replied, just exactly what I said, I don't know. This concluded our conversation and I reported the incident to Mr. Noffke who was back in the Division as the Acting Chief of the Branch.

Mr. Lennon: When you made this inquiry of Mr. Heck, were you Mr. Heck's supervisor?

Mr. Sedlock: At the time I made the inquiry, I was appointed as Acting Chief of the Branch in Mr. Noffke's absence. At the time I inquired if the data was prepared, I was not in an Acting position. I was just another employee in the Branch and I felt that I could take no further action and I reported the matter to Mr. Noffke who was the Branch Chief.

Mr. Lennon: Was it within the compass of your employment to request this information of Mr. Heck?

Mr. Sedlock: Yes. It is a normal and routine matter. Many times we have to secure data from another person within the branch or within the Division in matters of our programs.

Mr. Lennon: As you understood Mr. Heck's position at that time, was that Mr. Heck's responsibility to furnish this information in a proper and timely manner?

Mr. Sedlock: Well, it was my understanding that he was responsible for Transportation Programs. And he was the responsible person that I should secure this data (from).

Mr. Lennon: In other words your inquiry was direct to Mr. Heck carrying out an assigned responsibility to Mr. Heck.

Mr. Walsh: Mr. Sedlock, on the 27th of December 1963, were you the Acting Chief of the Combat Vehicle Branch?

Mr. Sedlock: Yes sir.

Mr. Walsh: Where did this incident take place?

Mr. Sedlock: In the Branch.

Mr. Walsh: What were the instructions that you gave him? Is it a classified matter?

Mr. Sedlock: No sir.

Mr. Walsh: What were they then?

Mr. Sedlock: They were data concerning estimates for our FY 65 Forecase of Programs for Transportation.

Mr. Walsh: What period of time did the matter cover?

Mr. Sedlock: Approximately two weeks.

Mr. Walsh: What was the major activity in which you were engaged at that time?

Mr. Sedlock: At that time, I was developing a five year programs for our Commodities.

Mr. Walsh: Had Mr. Heck done this work before?

Mr. Sedlock: I don't recall that he had.

Mr. Walsh: Was it within the scope of his employment?

Mr. Sedlock: I would say so.

Mr. Walsh: Did you contact Mr. Milne about the refusal at that time, December 27?

Mr. Sedlock: No sir.

Mr. Walsh: When did you first do that?

Mr. Sedlock: I never contacted Mr. Milne on this matter.

Mr. Walsh: Whom did you contact?

Mr. Sedlock: I contacted Mr. Noffke who was the Branch Chief and Mr. Heck's immediate supervisor.

Mr. Walsh: Was this work eventually done?

Mr. Sedlock: Yes sir.

Mr. Walsh: By whom?

Mr. Sedlock: It was done partially by myself with the help of Mr. Noffke and Mr. Wehking, who works in the capacity of a consultant in Transportation matters.

Mr. Walsh: Did you report this incident formally as a matter of insubordination to Mr. Noffke?

Mr. Sedlock: No sir.

Mr. Walsh: At that time, you didn't feel that it was insubordination?

Mr. Sedlock: At that time, I just merely reported the incident as it occurred, not with the thought of any malicious or insubordination.

Mr. Walsh: As a matter of fact, you didn't think there was anything very unusual about it at that time, did you, sir?

Mr. Sedlock: At that time, we were working against certain deadlines. The data was needed. I felt that Mr. Heck should have replied or should have cooperated in this matter or least given me a reasonable answer as to when he could develop this data. I felt that he had not given me a satisfactory answer on any of those counts and I just reported the matter to Mr. Noffke as a course of, an obvious course of action on my part.

Mr. Walsh: Is it a fact now, Mr. Sedlock, that Mr. Heck was on leave on 27th of December 1963?

Mr. Sedlock: I have no recollection of Mr. Heck's leave.

Mr. Walsh: Is that information available to you?

Mr. Carlson: It would be available.

Mr. Walsh: Can you produce it? The leave orders or whatever record?

Mr. Sedlock: I am sure that he would have the leave slip.

Mr. Walsh: If it is a fact that he was on leave, would you interrogate whoever has charge of the records as to whether he was on leave December 26 and December 27?

Mr. Lennon: Again I am going to object. The way the charge is stated that on or about the 27th of December. I think the only issue before the Grievance Examiner is at about that time and time subsequent thereto such an incident did take place as far as specific dates, we don't believe that we are bound by this.

Mr. Carlson: Then there is not much point in finding a specific date that he might have been here or might have been absent.

Mr. Lennon: The point is whether or not in the course of his employment, a day when he was on duty at approximately this time he did or did not do these things.

Mr. Walsh: We ask that that record be produced for what it is worth and made a part of this record, and a request is made.

Mr. Carlson: Sir, this will be entered into the record.

Mr. Walsh: Alright. Don't you feel, Mr. Sedlock, that the incident has been grossly exaggerated beyond the actual importance of it?

Mr. Sedlock: No sir.

Mr. Walsh: I think that is all.

Mr. Carlson: I would have one question, Emery (Mr. Sedlock), was there anything unusual in the manner in which these conversations took place?

Mr. Sedlock: I felt that to begin with the questions I asked Mr. Heck were normal as one employee to another when we have the data, etc. As he repeated, I do not know when he would have this data was sarcastic.

Mr. Carlson: Was it a normal tone of voice or something other?

Mr. Sedlock: I'll try to repeat it as close as I can remember it. He said it's as simple as this, I do not know.

Mr. Carlson: Thank you. Any further questions, Mr. Lennon?

Mr. Lennon: Would you tell Mr. Sculley to come in please? One thing, Mr. Walsh, do you contemplate calling any of these people back? We can get them in about five minutes if you want them, but I would just as soon tell those who have testified that they can go on back.

Mr. Carlson: I think that is a good idea, then we won't have to keep them tied up.

Mr. Lennon: If you do want one back, we can get on the phone and get them.

Mr. Walsh: Yes.

Mr. Carlson: Would you (Mr. Lennon) communicate that to those people, please? Sit down Mr. Sculley, Mr. Lennon will be back in just a moment.

Mr. Lennon: Would you state your name, and position, sir?

Mr. Sculley: Joseph R. Sculley, Sr., Supervisory Industrial Engineer, Procurement and Production Directorate, Artillery Branch.

Mr. Lennon: How long have you been in Government service, sir?

Mr. Sculley: Since 1959 at this installation, approximately five years.

Mr. Lennon: Mr. Sculley, on the 6th of February you prepared a memo for the record pertaining to a certain incident. I wonder if you would read this into the record, sir?

Mr. Sculley: In it's entirety?

Mr. Lennon: Yes, would you, please?

Mr. Sculley: Memo for the Record, 6 February.

Mr. Walsh: For the record, Mr. Examiner, only we object to the reading of the memo, 6 February 1964, for the reason that it is not in affidavit form, as contemplated by the regulations, in my understanding at least.

Mr. Carlson: You can insert this, but when one is presenting this under oath this is equivalent to the same.

Mr. Lennon: This is the purpose that I am having him read the whole thing so that there is no question at all about the statements made as a sworn statement. Will you read it, please?

Mr. Sculley: Yes, sir. Memo for the Record, 6 February 1964. Mr. Milne notified all personnel in the Division by DF that I was to be Acting Chief of the Division in his absence during the period 6 through 8 January 1964. At about 8:30 A.M. on 6 January, Mr. Heck appeared at the office door and said he wanted to see Mrs. Efaw. I informed him she would be back shortly. Within a few minutes Mrs. Efaw returned and talked with Mr. Heck. Shortly thereafter she told me Mr. Heck insisted that she furnish him with a regulation pertaining to Engineering Change Orders, ECO's. She also said Messrs. Prunsk and Heck had been assigned to participate in a meeting with representatives of other offices later in the day and were expected to review all regulations pertinent to Engineering Change Orders, ECO's abbreviated in the memo. I then spoke to Mr. Prunsk in regard to the forthcoming meeting and asked if he and Mr. Heck were prepared this Division at the meeting. He replied that he was familiar with the subject matter, but was concerned that Mr. Heck had not reviewed pertinent data that would be discussed. I then told him that I would see Mr. Heck and have him familiarize himself with this material. I approached Mr. Heck at his desk and asked him if he was prepared to attend the meeting. He said he had not read the existing regulations and that he had told Mrs. Efaw to get a copy for him. He said there were enough girls in the office to furnish him with whatever he wanted, and if no one gave him the information he would sit at his desk and review what he had before him. I tried to explain to him that it was not the duty of the secretaries, particularly Mr. Milne's secretary, Mrs. Efaw, to supply every piece of paper or article that the men in the Division might need. He then became very indignant and said that he didn't know who set up the operational procedure, but as far as he was concerned it was Mrs. Efaw's responsibility to provide him with this information and he did not intend to look for this material himself. I informed him that he was to go to the office and look in the library for the regulation. He immediately said he was not about to do this. I told him I wanted him to listen to me for a minute, and he said if I wanted to talk to him I should see his boss. I said at this particular time I was representing Mr. Milne and it was my responsibility to see that he was prepared for this particular assignment. He became boisterous and I asked him if he would like to go and see Major Hanby. He said no and that he was going to sit at his desk and read the papers that he had before him. Several people looked up from their desk as a result of the loudness of the conversation. I again told him to look in the library for this regulation and if it was not there he could ask Mrs. Efaw to obtain a copy through PPA, which is

the Administrative Office of that Directorate. I repeated that she was not the secretary for the entire Division and that even the secretaries in the Branches are not expected to obtain every piece of paper for each man in the Branch. However, when properly requested to assist and obtain the information they usually cooperate whenever possible. Since Mr. Heck did not make any attempt to follow my instructions I went back to Mr. Milne's office and waited for Mr. Noffke to return to the area to discuss the matter with him. Mr. Noffke informed me that he had encountered difficulty with Mr. Heck on three different occasions and that he would appreciate my writing a memo for the record covering this incident, and having a copy placed in the 201 file of Mr. Heck. Mr. Prunsk was quite perturbed that a new employee had taken such an attitude toward his work. Insubordination of this type is damaging to morale and detrimental to the efficient operation of this Division and should not be tolerated. J. R. Sculley, Chief, Artillery Branch, Production Planning Division.

Mr. Lennon: Mr. Sculley, you are now under oath, do you affirm this statement as being correct?

Mr. Sculley: Yes sir.

Mr. Lennon: You referred to Mrs. Efaw. Would you identify her position?

Mr. Sculley: Mrs. Efaw is Mr. Milne's secretary and assistant to Mr. Milne.

Mr. Lennon: You referred to going to see Major Hanby. Would you explain that, please?

Mr. Sculley: Major Hanby is the Deputy and Assistant to, or was at that time, the Deputy and Assistant to Col. Johnson, the Director of the Production and Procurement Directory.

Mr. Lennon: When you made this request to Mr. Heck, were you acting within the scope of your job, was it one of your duties?

Mr. Sculley: Yes, sir, to see that the Division was properly represented at these meetings.

Mr. Lennon: As you understand the organization of the Department, was it Mr. Heck's responsibility to do the things that you were requesting him to do?

Mr. Sculley: Yes, sir, they were his responsibility.

Mr. Lennon: I believe that is all.

Mr. Walsh: Mr. Sculley, these matters took place between 6 January and 8 January 1964, is that right?

Mr. Sculley: No, my assignment as Acting Division Chief took place between 6 and 8 January.

Mr. Walsh: Well, the incidents with Mr. Heck, during that two day period?

Mr. Sculley: Yes sir.

Mr. Walsh: How was it that you waited till the 6th of February to write this memo?

Mr. Sculley: I wanted to discuss this with my immediate supervisor, Mr. Milne, which I did on the telephone.

Mr. Walsh: Where was Mr. Milne at that time?

Mr. Sculley: He was on travel, at which particular installation I do not recall at this time.

Mr. Walsh: He was absent during the entire month?

Mr. Sculley: No, from the 6th to 8th January, he was absent.

Mr. Walsh: When did he return?

Mr. Sculley: I believe he would have returned on the day after the 8th, the 9th of January.

Mr. Walsh: Did you report it to him on the 9th?

Mr. Sculley: No, sir, I reported it to him on the telephone. We again discussed it on his return, but we discussed this matter on the telephone when he called in the exact time I couldn't say, whether it was on the 6th or the 7th.

Mr. Walsh: But, in any event, you didn't do anything about it until the 6th of February, at the suggestion of Mr. Noffke, is that right?

Mr. Sculley: I went over it in my own mind as to what action I was going to take. As Acting Division Chief, I felt that some action should be taken.

Mr. Walsh: It was at the suggestion of Mr. Noffke, wasn't it, that in February you made this memo?

Mr. Sculley: Not entirely, no, sir.

Mr. Walsh: Well, Mr. Noffke asked you to do that, didn't he?

Mr. Sculley: Yes, sir, I complied with his request.

Mr. Walsh: Was he a superior to you?

Mr. Sculley: No, sir, at that time he would be acting in a subordinate capacity.

Mr. Walsh: Was Mr. Milne your superior?

Mr. Sculley: Yes sir.

Mr. Walsh: Did Mr. Milne ask you to write the memo?

Mr. Sculley: Yes, sir, on the telephone he said yes definitely to.

Mr. Walsh: Mr. Sculley, were you present on January 6 when Mr. Heck appeared at the door and asked to see Mrs. Efaw?

Mr. Sculley: Yes, sir, I was sitting in Mr. Milne's desk.

Mr. Walsh: You are all in one area there, is that right?

Mr. Sculley: Yes sir.

Mr. Walsh: Are all things contained in 6 February 1964 memo of your personal knowledge?

Mr. Sculley: Yes sir.

Mr. Walsh: Do you think that you handled the incident with Mr. Heck in the best way?

Mr. Sculley: Yes sir.

Mr. Walsh: Who were you attempting to assist with your efforts?

Mr. Sculley: Assist in what way, sir?

Mr. Walsh: Well, what were you trying to get done?

Mr. Sculley: To have the job accomplished in the manner in which it should be.

Mr. Walsh: Mrs. Efaw was in a secretarial capacity, was she not?

Mr. Sculley: To Mr. Milne and myself at that time.

Mr. Walsh: And the initial difficulty was over getting some regulations from the library, is that right?

Mr. Sculley: The initial difficulty of the day, yes, sir.

Mr. Walsh: And it wouldn't be unreasonable for an Engineer to suggest that a secretary get the regulations, would it?

Mr. Sculley: His secretary or the secretary assigned to that particular Branch?

Mr. Walsh: Well, weren't you being a little rank conscious when you charged him with -

Mr. Lennon: I'm going to object to that.

Mr. Carlson: I don't think that this is necessary either. Let me inject something in here if I may, please.

Mr. Walsh: Alright.

Mr. Carlson: The acquiring of various information appears to be entering in this. I'd like to kind of clarify this in my mind. Is it normal that the various secretaries and Mr. Milne's be expected to provide this kind of service?

Mr. Sculley: Normally, they do not. Normally, the men go to the library, they know the library is there, they are aware of this, and we obtain what documents ourselves.

Mr. Carlson: It is normal for the various individuals to secure this information themselves?

Mr. Sculley: Yes, sir, not only in our office, but throughout AMC. I've worked in AMC offices and this is standard procedure.

Mr. Carlson: Then we are indicating that this request is something other than a normal situation so this really wasn't required, is this what you are saying?

Mr. Sculley: Yes, it is only required if we look and material is not there, then we go to the right and proper channels to obtain this information, or copy of it.

Mr. Carlson: Mr. Walsh, I think that kind of puts into focus the fact that an Engineer should not be expected to get this. Do you agree?

Mr. Walsh: Well, my point in bringing this out is that I think they make a mountain out of a molehill on all this stuff. This is a typical example of it. It wouldn't be unreasonable for an Engineer or Lawyer or anyone else to ask a secretary whether it was his own or someone else's secretarial help to get a regulation, I mean, if it means dismissal of a man from his job for something like that, I don't think it's a ground. That is my purpose in it.

Mr. Sculley: My objection at the time was not in the request, but in the refusal to carry out a direct assignment.

Mr. Walsh: Well, what was, I will shorten this as much as possible, sir, his assignment according to your idea of it, Mr. Sculley?

Mr. Sculley: To become familiar enough with the contents of the regulation so that he could discuss this and represent the Division in making decisions effecting the alterations and rewriting of this document.

Mr. Walsh: It was for the preparation of an order was that it, some kind of an official order?

Mr. Sculley: The order covered, or the regulation covers the procedural regulations covering Engineering Change Orders.

Mr. Walsh: And Mr. Heck was to be in on a meeting that would formulate that information to be put in this order, is that right?

Mr. Sculley: A re-write.

Mr. Walsh: A re-write of the order?

Mr. Sculley: Yes sir.

Mr. Walsh: And he was to do some of the brain work of the preparations of that, wasn't he as an Engineer?

Mr. Sculley: Yes, to the extent of representing our Division.

Mr. Walsh: His professional capacity as an Engineer would be helpful in preparing this order?

Mr. Sculley: Yes.

Mr. Walsh: And that is what he was hired for by the Government, wasn't it?

Mr. Sculley: Yes, he hired to become familiar with, in this particular instance, to become familiar with this information so that he could carry out.

Mr. Walsh: He wasn't hired for a maintenance man for the library, was he?

Mr. Lennon: I'm going to object to that.

Mr. Carlson: We have been through this before, Mr. Lennon and Mr. Walsh. We are not talking about the responsibility or the assignment of workload. This we have already established as being a management responsibility and whether it was strictly an Engineering function or not and Engineering function. If it is a management assigned workload, this was his responsibility. I think you will have to bear this in mind. Let us proceed.

Mr. Walsh: Was Mrs. Efaw your secretary?

Mr. Sculley: At the time, yes, sir.

Mr. Walsh: And she was in that position before Mr. Heck joined your organization?

Mr. Sculley: Yes sir.

Mr. Walsh: Where were the regulations kept in your Division?

Mr. Sculley: In a special bookcase or file case. At the time they were kept right in Mr. Milne's office.

Mr. Walsh: Did you talk to Mr. Milne or anyone other than Mr. Noffke before you wrote the memo, 6 February, here?

Mr. Sculley: Mr. Heck himself, only, of course.

Mr. Walsh: That's all?

Mr. Sculley: Yes, sir. In regarding the subject matter?

Mr. Walsh: Writing and preparing the memo of complaint here. Mr. Heck, only, is that right?

Mr. Sculley: Pertaining to this subject matter. I talked to other people of course in the course of the day, I talked to many people.

Mr. Walsh: How long have you been in the service?

Mr. Sculley: A total of ten years. Five and a half years here at this installation.

Mr. Carlson: Can we avoid some of these? These are not pertinent.

Mr. Walsh: That is all for this witness.

Mr. Lennon: Mr. Prunsk is next. Mr. Prunsk, will you state your full name and your grade, your position?

Mr. Prunsk: Vincent W. Prunsk, GS-14, and I'm Chief of the Installation Management Branch.

Mr. Lennon: How long have you been in Government service?

Mr. Prunsk: Twenty-four years.

Mr. Lennon: How long have you been in the United States Army Weapons Command?

Mr. Prunsk: From the beginning of it.

Mr. Lennon: This dates from 1955 when it was the Ordnance Weapons Command?

Mr. Prunsk: Yes sir.

Mr. Lennon: What position were you occupying on approximately six through eight January 1964?

Mr. Prunsk: I was an Industrial Specialist during that period of time and I was considered the senior specialist in that area.

Mr. Lennon: Do you recall an incident on or about those dates involving Mr. Heck?

Mr. Prunsk: Yes, I do.

Mr. Lennon: Would you briefly state for the Examiner what the incident was?

Mr. Prunsk: Mr. Heck and myself were assigned to attend a meeting involving Engineering Change Order procedures and at this time I considered Mr. Heck to be a relatively new man in the organization and I didn't know how much background he had in Government service or procedures. And I was aware of the discussion that was taking place between Mr. Sculley and Mr. Heck, however, I was not involved directly myself. I mean, I had knowledge of it, but I didn't hear any of it as such. The reason I had knowledge was because I was assigned to this meeting. I was very concerned because I felt that he was a relatively new man, and should have as much background as possible before he went to the meeting.

Mr. Lennon: Mr. Sculley has admitted stated and he has reiterated under oath. In the statement he says in referring to this incident, I then spoke to Mr. Prunsk in regard to the forthcoming meeting and asked if he and Mr. Heck were prepared to represent this Division at this meeting. He, referring to you, Mr. Prunsk, replied that he was familiar with the subject matter, but was concerned that Mr. Heck had not reviewed pertinent data that would be discussed. Do you recall this incident?

Mr. Prunsk: Yes, I do.

Mr. Lennon: Is this the knowledge that you are referring to?

Mr. Prunsk: Yes sir.

Mr. Lennon: Do I understand you to say that you actually did not hear the conversation?

Mr. Prunsk: I think that there was probably quite a bit of conversation between the two gentlemen and I was not seated in the immediate area with Mr. Heck so -

Mr. Lennon: How far were you from him?

Mr. Prunsk: I would say offhand about four or five rows over.

Mr. Lennon: Did you observe either by seeing or hearing what was going on?

Mr. Prunsk: Well, I had knowledge of it. *

Mr. Lennon: By having knowledge of it, would you tell me exactly what you mean?

Mr. Prunsk: From Mr. Sculley's conversation to me and people talk among themselves.

Mr. Lennon: You have general knowledge of what was going on and you weren't in on the incident?

Mr. Prunsk: That is right.

Mr. Lennon: I think under the circumstances that other than his testimony he was on the assignment with Mr. Heck and that he was worried about it, but his other testimony was disqualified as completely hearsay as I understand it. Is that satisfactory with you, Mr. Walsh? He is subject to cross-examination within what he testified to.

Mr. Walsh: Yes, I just want to ask a couple of questions about his background and so forth. Is that alright?

Mr. Carlson: Are you finished, Mr. Lennon?

Mr. Lennon: I am through, yes.

Mr. Walsh: Mr. Prunsk, you have been with the Department of the Army for twenty-four years?

Mr. Prunsk: Yes, sir, I have.

Mr. Walsh: And you were mindful of the fact that Ted Heck was with the service only from September 1963 up to the time of these incidents, which were in January and February, weren't you?

Mr. Prunsk: I was aware that he was a new employee.

Mr. Walsh: Newcomer?

Mr. Prunsk: Yes, and I didn't have knowledge of his background, sir.

Mr. Walsh: Who was supposed to be at this meeting in January?

Mr. Prunsk: Well, the way it was set up was that all the organizations, the elements of the Command were supposed to be represented that were involved in Engineering Changes and we represented our Directorate.

Mr. Walsh: Were you present generally in the assemblies of Mr. Heck and the others that day?

Mr. Prunsk: During the meeting you mean, sir?

Mr. Walsh: Yes.

Mr. Prunsk: Yes, we both were.

Mr. Walsh: You were in the meeting with him?

Mr. Prunsk: Yes, sir, we were.

Mr. Walsh: Did Mr. Heck work on the procedural changes as an Engineer?

Mr. Prunsk: I would say that this was a group effort. It was not an effort of an individual.

Mr. Walsh: But did he participate in it?

Mr. Prunsk: Yes, he did.

Mr. Lennon: Again we are aside from the point of issue here.

Mr. Walsh: Well, I don't think so, I think it shows that this man is one of longevity here. He saw Mr. Heck that day. He can that he participated at the meeting in good faith as an Engineer.

Mr. Carlson: But, remember that when we started out we said that this was not a problem of technical ability. This was in one of the very first things that we stated. This was a question of -

Mr. Walsh: Well, on the record I would like to point out to Mr. Examiner that I think it is an issue. For this reason, that the United States Government hired this man for his services as an Engineer, and I think it overweights any possible friction that might have existed among personnel over such things as getting a regulation. I think the importance is to whether or not this man performed and could have performed a service well as an Engineer.

Mr. Lennon: This is not an issue at all.

Mr. Carlson: No, when we started -

Mr. Walsh: I would like it in the record.

Mr. Carlson: This is fine, when we stated to begin with, let me re-read it, maybe that will -

Mr. Walsh: No, I understand the position of the Examiner, I just want it on the record to call it to their attention.

Mr. Carlson: O.K.

Mr. Walsh: I'll ask him a couple of questions in line with the ruling. Did you know anything in particular about the events concerned with obtaining the regulation which Mr. Sculley describes in his memo?

Mr. Prunsk: I had general knowledge of it. As I stated before, I was not directly involved in it because it was actually between Mr. Sculley and Mr. Heck.

Mr. Walsh: Were you perturbed about anything that happened that day between Mr. Heck and Mr. Sculley?

Mr. Prunsk: Well, I was disturbed that to the degree that when you attend these meetings you go in there as a team and you are expected to participate fully to represent your Directorate.

Mr. Walsh: Would you say that Mr. Heck participated fully?

Mr. Prunsk: Well, as I recall I can't say that I would be in a position to judge whether he participated fully or not. I think that he expressed some opinions as I recall it and the degree I am not able to say whether this was fully or not.

Mr. Walsh: Mr. Heck did express some opinions?

Mr. Prunsk: Yes, he did.

Mr. Lennon: One moment, sir, are we talking about the actual meeting, the testimony of Mr. Prunsk is limited to what took place during the time they were preparing for the meeting, I understand, is this correct? You're asking about the meeting for which this preparation was being made, is that right, Mr. Walsh?

Mr. Walsh: Yes, that's right.

Mr. Lennon: I don't think that what took place in the meeting is an issue at all here.

Mr. Carlson: I don't recall the item per se, may I see it, please? There is nothing that I see in this memo for record that pertains to the things that happened during the meeting, it appears to pertain entirely to those things preceeding it. I think that we are weighing this on the basis of this evidence that we ought to confine our comments to things preceeding.

Mr. Walsh: Alright. Had you actually viewed the draft of the revision of this order?

Mr. Prunsk: Yes, we had. I think we had difficulty in obtaining the draft, but as I remember we did view the draft.

Mr. Walsh: Was the draft prepared elsewhere, is that it?

Mr. Prunsk: Yes, it was.

Mr. Walsh: Some other unit of the Army?

Mr. Prunsk: Yes.

Mr. Walsh: At some other installation?

Mr. Prunsk: No, it wasn't. To my knowledge it was prepared by our management and science people with the headquarters element.

Mr. Walsh: And you were examining as to whether or not there ought to be revisions or whether or not to adopt?

Mr. Prunsk: This is true.

Mr. Carlson: This appears to be sort of a staffing meeting that you were getting

ready for.

Mr. Prunsk: This is true.

Mr. Walsh: That's all, sir.

Mr. Lennon: One thing I would like to mention before Mr. Prunsk goes, he had an absolute commitment for about the last six weeks to be at a briefing session this afternoon so he will not be available again, is that perfectly alright?

Mr. Walsh: Yes. (To Mr. Prunsk) Now in the proposed Separation-Disqualification letter, 7 July 1964, paragraph four, signature of Mr. Paul H. Noffke, it is expressly stated that fellow employees, Messrs. V. W. Prunsk, J. R. Sculley, and Mrs. B. Linn, have stated that they do not wish to work with you, meaning the subject Mr. Theodore G. Heck, because of your sarcastic argumentative attitude as documented in part in Exhibits A and B. The work your being applied to Mr. Theodore Heck. Did you ever make such a statement?

Mr. Prunsk: Yes, sir, I did.

Mr. Walsh: To whom?

Mr. Prunsk: I think I made this to Mr. Sculley and I think I have made it to Mr. Noffke and Mr. Milne as well.

Mr. Walsh: And was that reduced to writing?

Mr. Prunsk: No, sir, it was not.

Mr. Walsh: You gave it orally, is that right?

Mr. Prunsk: That's right, sir.

Mr. Walsh: Under what circumstances did you base that opinion?

Mr. Prunsk: Because of the belligerent attitude that Mr. Heck has displayed at times.

Mr. Walsh: When?

Mr. Prunsk: Well, there are many conversations that are carried on during the working day and where programs cross lines from one unit to the next and I was of the opinion that if you go to any of these sections that you have to have the full cooperation of everybody representing the Directorate. I didn't feel that I wanted to jeopardize my position with the Government by being involved in anything that would be contrary to my thinking.

Mr. Walsh: Your opinion is based primarily on Mr. Heck's experience with other people, is that right?

Mr. Prunsk: Yes, I would say so.

Mr. Walsh: Has he ever been belligerent to you?

Mr. Prunsk: I can't say that he has to me.

Mr. Walsh: Were you in a superior capacity?

Mr. Prunsk: No, not superior.

Mr. Walsh: But, about on the same level, would you say?

Mr. Prunsk: Well, I would say probably on the same level because he had the same number of supervisors over him that I had myself.

Mr. Walsh: Do you think that he is an unfit person for the service?

Mr. Prunsk: I don't think I am in the position to judge.

Mr. Carlson: We're not talking about this, Mr. Walsh.

Mr. Walsh: So you're not basing any of your opinion on any personal experience?

Mr. Prunsk: This is true.

Mr. Carlson: Is that all?

Mr. Walsh nodded affirmately.

Mr. Lennon: That's all.

Mr. Carlson: Who is your next witness then?

Mr. Lennon: Mrs. Efaw.

Mr. Carlson: Would you ask Mrs. Efaw to come in, Mr. Prunsk?

Mr. Lennon: Would you state your name and your grade and position, please?

Mrs. Efaw: Catherine Efaw, Clerk-Stenographer, GS-5.

Mr. Lennon: How long have you been in Government service, Mrs. Efaw?

Mrs. Efaw: Three and one-half years.

Mr. Lennon: How long have you been in your present position?

Mrs. Efaw: About one year.

Mr. Lennon: What is that position?

Mrs. Efaw: As Mr. Milne's secretary.

Mr. Lennon: Mr. Milne's secretary?

Mrs. Efaw: Right.

Mr. Lennon: Would you tell me Mr. Milne's title?

Mrs. Efaw: He is a Supervisory Industrial Engineer, GS-15.

Mr. Lennon: And he is in charge of what?

Mrs. Efaw: Production and Planning Division.

Mr. Lennon: Is it correct that I should say Division here? I get confused myself regarding which area within which Mr. Heck was employed.

Mrs. Efaw: Yes.

Mr. Lennon: Did you at anytime work for Mr. Heck?

Mrs. Efaw: No, not really.

Mr. Lennon: The point I'm making is that you were Mr. Milne's secretary and you were subject to Mr. Milne's direction.

Mrs. Efaw: Right.

Mr. Lennon: Were you at anytime subject to Mr. Heck's direction, as such?

Mrs. Efaw: Well, not really.

Mr. Lennon: This is the point I am trying to make. Do you recall an incident on or about the 6th to 8th of January which Mr. Heck made a request for you to get some things for him out of the library?

Mrs. Efaw: Yes.

Mr. Lennon: Would you recite that briefly for the Examiner?

Mrs. Efaw: Well, it's been quite awhile ago.

Mr. Lennon: To the best of your ability.

Mrs. Efaw: I believe I was standing out in the aisle and there were several people around asking me questions and he was one of them. He asked me if I would get him a regulation and I said I'm busy. And I went on to someone else at the time. Later I went over to his desk and I said, did you find the regulation and he said no. That's about what happened.

Mr. Lennon: Did he ever find it or where was the regulation or do you know?

Mrs. Efaw: Well, I don't know whether he ever found it or not. I don't know whether it was in our library or whether it was not.

Mr. Lennon: Was this carried any further as far as you were concerned, do you recall?

Mrs. Efaw: I told him to go look for the regulation in the library, I'm not sure, he may, or he may have not told me that it wasn't there. I'm not sure. But anytime a regulation is not in our library it may be in the Directorate library and it may be that he may have to go over to Mr. Blocklinger's office, you know, to pick up a regulation.

Mr. Lennon: I believe that's all I have.

Mr. Walsh: You were Mr. Milne's secretary prior to Mr. Heck's arrival, were you not?

Mrs. Efaw: Yes.

Mr. Walsh: And are you still in that capacity?

Mrs. Efaw: Yes.

Mr. Walsh: He asked you for a regulation and you said you were busy, is that about what you said?

Mrs. Efaw: Yes.

Mr. Walsh: And then he went to look for it himself, did he?

Mrs. Efaw: I don't know what he did, I talked to him later about it. I said did you find it?, and he said no.

Mr. Walsh: During the orientation of the new Engineers, including Mr. Heck, did Mr. Milne advise them that you were in charge of the regulation files, and would attempt to acquire those not in the files when required?

Mrs. Efaw: Yes.

Mr. Walsh: That's all.

Mr. Lennon: Beverly Linn, please.

Mr. Carlson: Will you have a seat, Mrs. Linn. You have previously been sworn. You may proceed, Mr. Lennon.

Mr. Lennon: Will you state your name, your grade, and your position, please?

Mrs. Linn: Beverly Ann Linn, I am a CS-4 Clerk-Steno.

Mr. Lennon: For whom do you work?

Mrs. Linn: Mr. Paul Noffke.

Mr. Lennon: Do you recall an incident involving Mr. Theodore Heck a time card incident in which you attempted to or you asked Mr. Heck to sign for annual leave?

Mrs. Linn: Yes.

Mr. Lennon: Would you recite briefly for the Examiner what the incident was?

Mrs. Linn: He was late arriving for work and I took the time card back for him to sign and he refused, so I therefore took it to my supervisor.

Mr. Lennon: Did he give any reason for refusing to sign the time card?

Mrs. Linn: He just said he wasn't going to sign it.

Mr. Lennon: Do you have any direct knowledge what happened after that?

Mrs. Linn: No, except that I gave it to Mr. Noffke and he took care of it from there.

Mr. Lennon: The time card you mean you gave to Mr. Noffke. Did you explain to Mr. Heck that this was required under the regulations?

Mrs. Linn: Not at this time. But, that was understood, I mean, he understood that.

Mr. Lennon: You presumed that this was understood. Do you recall the reasons why he was late or didn't want to sign the time card? Do you recall anything at all about what the incident was?

Mrs. Linn: I believe he witnessed an accident.

Mr. Lennon: To the best of your recollection. I believe that's all.

Mr. Walsh: Did this occur on 16 December 1963?

Mrs. Linn: I don't remember the date.

Mr. Walsh: You don't remember the date?

Mr. Carlson: Again we are talking about an incident and the date would appear to be a minor incident as long as it is within this same time.

Mr. Walsh: You don't know what date it was, to the best of your recollection, is that it?

Mrs. Linn: No, I do not know.

Mr. Walsh: You don't know if it was December or January 1964. Did Mr. Heck finally initial the time card, do you know?

Mrs. Linn: That, he did, but not - I didn't take it back to him to have it signed.

Mr. Walsh: Someone else did? There was some little discussion over whether or not it should be initialed or not, is that right? Between you and him.

Mrs. Linn: There wasn't any discussion. —

Mr. Walsh: Were you present when the initials were obtained?

Mrs. Linn: I wasn't present at his desk when he signed it, no.

Mr. Walsh: But you know that he did initial them eventually?

Mrs. Linn: Yes.

Mr. Walsh: What was the situation? Describe the situation in detail.

Mr. Carlson: Which situation are you referring to?

Mr. Walsh: He was charged in Exhibit A for refusing to initial off on payroll card on time charged against him for being late. When initials were obtained it was done under extreme protest. What was your observation of the situation? In respect to that subject, what happened?

Mrs. Linn: Well, he was just late coming to work and that is just a rule you have to take off on annual leave and he refused to sign it.

Mr. Walsh: That's all?

Mrs. Linn: So, I don't know when he did.

Mr. Walsh: How late was he?

Mrs. Linn: He was two hours late.

Mr. Walsh: And was there an explanation given to you by him at the time?

Mrs. Linn: That he had witnessed an accident.

Mr. Walsh: He had witnessed an accident, where at?

Mrs. Linn: I don't know.

Mr. Walsh: Did you relay that information to someone?

Mrs. Linn: I didn't have to, No.

Mr. Walsh: You didn't have to?

Mrs. Linn: But they knew. Mr. Noffke knew that it had happened.

Mr. Walsh: Did he know that before or after the refusal to initial the time card.

Mr. Carlson: I wonder what the relevancy to this is, Mr. Walsh. All time must be accounted for, these are definitely established principles and all we are doing here is establishing that these principles were followed and I think that we would do well to stay within that concept.

Mr. Walsh: Well, I am trying to. I think that we are entitled to an explanation as to the circumstances under which the refusal was given. That's my point. If a man was on the highway and the law requires him to stop for an accident and he was gone for two hours or more, that would be a reasonable explanation, in my judgment.

Mr. Lennon: This is not a penalty, Mr. Walsh, this is simply that there is an eight hour workday and this has to be accounted for by sick leave, by annual leave. He has a certain amount of annual leave coming and it has to be signed for. There is no way that we can get funds to pay people. This accounting is basic, this is done, everybody in the Government does it.

Mr. Carlson: I don't see the relationship to the reason. Between the reason and what we are doing here.

Mr. Walsh: The man was just employed in September 1963 and this incident occurred, possible, in December 1963, it could be that he didn't understand the requirement of just arbitrarily initialling the time cards. I don't think that there is any showing here that this man was advised of that information. I don't think that that is grounds for a man being separated from a job of \$9,980 dollars a year.

Mr. Carlson: May I ask a question? To kind of draw this out, did Mr. Heck realize that this was something that he was required to do or that it would be nice that he did, or he didn't have to do it at all? Was there any shade in there how that might have -

Mrs. Linn: You mean sign the card?

Mr. Carlson: Yes, Madam. Did he understand that this is a requirement or it's not a requirement or it would be nice to do?

Mrs. Linn: Well, to my knowledge when anyone gets a job over here this is something that is understood before they ever start working. It's in your orientation. Everyone is briefed as to the rules and regulations.

Mr. Walsh: With what particular words did he utter the refusal?

Mrs. Linn: I don't recall.

Mr. Walsh: To the best of your knowledge?

Mr. Carlson: Was there anything in the manner in which he replied that would be related to what we are doing?

Mrs. Linn: All I can say is that when I asked him to sign it, he was just rude in refusing to sign it so I didn't go any further. I just went back.

Mr. Walsh: You don't actually remember an incident on the 16th of December 1963?

Mrs. Linn: I don't remember the date.

Mr. Carlson: Are there any further questions?

Mr. Walsh: That's all.

Mr. Carlson: You (have further questions), Mr. Lennon?

Mr. Lennon: Yes. My next witness will be Mr. Hays. You (Mrs. Linn) are going to call Mr. Milne, right?

Mrs. Linn: Yes.

Mr. Carlson: Come in, Mr. Hays. You were sworn previously. Have a seat and will will proceed.

Mr. Hays: Yes sir.

Mr. Lennon: Will you state your full name, your grade, your present position, Mr. Hays?

Mr. Hays: Fredrick W. Hays, Industrial Engineer, GS-12.

Mr. Lennon: How long in Government service, Mr. Hays?

Mr. Hays: Since March the second of this year.

Mr. Lennon: Have you been employed in your present position all the time since March?

Mr. Hays: I have been here on the Island in that position since March 2nd, yes.

Mr. Lennon: Do you recall an incident on or about the 16th of June to which you had been delegated the responsibility for compilation of some data in which you made the request to Mr. Theodore Heck for information on First Destination Transportation?

Mr. Hays: Yes sir.

Mr. Lennon: Would you tell the Examiner briefly as fully as you recall just what was involved in the incident?

Mr. Hays: Yes. It was necessary for me to request information from Mr. Heck and he refused on the grounds that it was not information of an Engineering nature.

Mr. Lennon: Were you acting within your job description, your assigned duties, when you requested this information?

Mr. Hays: Yes, sir, I was so required to request information from anyone having those particular programs.

Mr. Lennon: Was Mr. Heck the proper man to obtain information in your judgment?

Mr. Hays: Yes, sir. That was his assignment.

Mr. Lennon: Did you report this incident to Mr. Heck's supervisor or supervisors?

Mr. Hays: yes sir.

Mr. Lennon: Did they tell you that this was Mr. Heck's responsibility that he should provide the information?

Mr. Hays: Yes sir.

Mr. Lennon: Do you have knowledge whether or not he did in time provide the information?

Mr. Hays: Within about an hour Mr. Heck returned with the information.

Mr. Lennon: Do you know whether or not he did that as a result of an order from somebody or do you have any knowledge of that?

Mr. Hays: No, sir, I don't know.

Mr. Lennon: I believe that's all.

Mr. Walsh: Mr. Hays, did Mr. Heck refuse in so many words to give you the information?

Mr. Hays: Yes sir.

Mr. Walsh: What did he say?

Mr. Hays: He said that the work was not of an Engineering nature and it wasn't his responsibility.

Mr. Walsh: Mr. Hays, in all fairness, did he not state that the information was not available?

Mr. Hays: No sir.

Mr. Walsh: Do you think that he made an attempt to get the data from the Finance and Accounting organization?

Mr. Hays: At that moment I had no indication that he did.

Mr. Walsh: Did he later?

Mr. Hays: He later came back with it.

Mr. Walsh: Was he ever able to acquire the actual information required, reluctantly or otherwise?

Mr. Hays: To the best of my knowledge the information that he gave me I posted in the report.

Mr. Walsh: It was accurate and in good condition?

Mr. Hays: To the best of my knowledge.

Mr. Walsh: When you submitted the report, what data did you submit in regard to the First Destination and Transportation?

Mr. Hays: Exactly the ~~xxxxxxxxxx~~ he had given me.

Mr. Walsh: So that the compilation of information was accurate and correct?

Mr. Hays: The only indication I have of that was that the report was acceptable.

Mr. Walsh: To whom would it go, some higher echelon in Washington?

Mr. Hays: Eventually, yes, sir.

Mr. Walsh: It was never returned for any changes or unsatisfactory. When you reported to Mr. Noffke that you couldn't get the necessary information from Mr. Heck, what did Mr. Noffke say in response?

Mr. Hays: He said that he would take care of it.

Mr. Walsh: When you reported that you couldn't get the information from Mr. Heck, were you not merely trying to excuse yourself knowing full well that the information did not exist?

Mr. Lennon: I'm going to object to this.

Mr. Carlson: What is behind the question, Mr. Walsh?

Mr. Walsh: I understand there had to be some searching to get the information. Eventually it was done, as stated by this witness.

Mr. Carlson: I'm not sure that at the time the recourse was made. Let me put it this way, would you have known if existed or didn't exist, Mr. Hays?

Mr. Hays: Yes, sir, I knew where it was.

Mr. Carlson: Then you did request something that was obtainable?

Mr. Hays: From a satisfactory source.

Mr. Walsh: That's all sir, thank you.

Mr. Lennon: I have no further questions. We have called Mr. Milne. He should be here in just a moment.

Mr. Carlson: Will you raise your right hand, Mr. Milne? Do you swear that the testimony you are about to give in this case is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Milne: I do.

Mr. Carlson: You realize that you are bound through the balance of this hearing by this oath?

Mr. Milne: Yes sir.

Mr. Carlson: Also be advised that refusal to testify except on grounds of self incrimination is reason for inquiry or may constitute grounds for disciplinary action.

Mr. Milne: I appreciate that, sir.

Mr. Carlson: Would you sit down, please? Will you proceed, Mr. Lennon?

Mr. Lennon: Yes. Mr. Milne, would you state your full name, your grade, and your position?

Mr. Milne: My name is Richard Lawrence Milne, my grade is GS-15. I'm a Supervisory Industrial Engineer and Chief of the Production Planning Division of the Procurement and Production Directorate.

Mr. Lennon: How long have you been in your present position?

Mr. Milne: Since mid July of last year.

Mr. Lennon: 1963, about fourteen months. Was Mr. Theodore G. Heck employed within your Division or Department?

Mr. Milne: Yes, sir, he was.

Mr. Lennon: Was Mr. Paul Noffke employed within your Department?

Mr. Milne: Yes, sir, he was.

Mr. Lennon: Mr. Noffke, as I understand the testimony here, was Mr. Heck's supervisor.

Mr. Milne: That is correct.

Mr. Lennon: Did Mr. Noffke discuss Mr. Heck's performance during his probationary period in Mr. Noffke's Department with you?

Mr. Milne: Yes, sir, he did.

Mr. Lennon: Mr. Noffke has submitted a statement dated 13th of January and read into the record. There was a quotation to that particular statement read into the record by Mr. Noffke. Mr. Noffke says over his own signature and "with regard to the last paragraph that Mr. Heck's primary problem is attitude it is mutually agreed by the undersigned that Mr. Heck will be put on notice as to the above and the current assignment to Combat Vehicle Branch will be continued through 24 January 1964 and the situation re-evaluated at that time." Is this your signature?

Mr. Milne: Yes, sir, it is.

Mr. Lennon: Do you recall (you might keep this and look at it for a moment) what did happen at this time?

Mr. Milne: At this particular point in time Mr. Noffke as the supervisor in charge of the Branch (Combat Vehicle Branch), felt that it was very important to us as a management team to discuss with Mr. Heck his shortcomings and attempt to assist him in correcting them, if you want to look at it that way. Mr. Noffke had a much more intimate relationship with Mr. Heck, since he was his direct supervisor, than I had. However, I was familiar with the incidences that Mr. Noffke had reported here having had them fed back to me through informal channels. In an organization of our type or in any organization it's essential that people be able to work together and this meeting which, at which we discussed this memo with Mr. Heck, we attempted to point out the importance of compatibility of people, organizations, jobs, getting the job done as it had to be done.

Mr. Lennon: This you are alluding now the date at the top of that 13 January, I believe it is?

Mr. Milne: Yes.

Mr. Lennon: You had a discussion on that date or the day after?

Mr. Milne: Yes.

Mr. Lennon: And Mr. Heck was supplied a copy of this particular document, is that right?

Mr. Milne: He was given a copy at the time of the discussion, yes. A

Mr. Lennon: You discussed each point in the document at that time? *

Mr. Milne: We discussed each point in the document at that time.

Mr. Lennon: Did Mr. Heck deny?

Mr. Milne: There were two points that required additional clarification in Mr. Heck's mind, yes, and these were clarified to my satisfaction.

Mr. Lennon: This statement you signed at the bottom you said that the 24th of January there would be a recompilation on what had happened. Was that performed on or about that date?

Mr. Milne: To my best recollection on the 24th of January in discussing it with Mr. Noffke we felt that there had been an indication of correction.

Mr. Lennon: The only point I am trying to make is that you were present at the second conference. Is that correct?

Mr. Milne: The conference when he was given the appraisal?

Mr. Lennon: No, on the 13th of January you discussed these matters with him?

Mr. Milne: Right.

Mr. Lennon: You gave until the 24th of January, for as I understand the memo, a rediscussion of these. This is the point, were you present at that or was that strictly between Mr. Noffke and Mr. Heck?

Mr. Milne: As I recall it, I was not present. This was primarily between Mr. Noffke and Mr. Heck. At that time, Mr. Noffke's feelings were as he reported them back to me, that Mr. Heck had shown improvement in his attitude towards people, and -

Mr. Lennon: The reason I'm asking this is that the record doesn't show exactly what did happen on the 24th. I didn't know for sure if you were there.

Mr. Milne: No, I wasn't.

Mr. Lennon: Did you have discussions with Mr. Heck after the 13th of January at anytime, if so what were they?

Mr. Milne: I had occasion, I don't remember the exact dates, on a couple of times to discuss with Mr. Heck interpretations of a regulation related to proper conduct of Government personnel. This is a regulation that we are required to sign on a yearly basis that defines gratuities in the place of a Government employee and his relationships with the contractors and other people.

Mr. Lennon: Are you familiar with the probationary period employee performance appraisal that was given Mr. Heck?

Mr. Milne: Yes sir.

Mr. Lennon: As part of the record, do you want to refresh your mind by reading it briefly and giving a slight discussion on that?

Mr. Milne: Yes. With regard to point one, we mentioned that Mr. Heck's technical experience enables him to make sound decisions in a technical area, and we had no particular feeling that he was incompetent in the technical area. He had indicated to us a competent delivery of work as we reported in the fitness report was the average of what we expect of a Industrial Engineer of his grade. His written communications, as we reported, are factual, oral expressions were reported as firm, but tends to be sarcastic. I personally had some experience in this area myself, so that I felt qualified to sign it. His cooperation and work in relationship with others is unsatisfactory. Undesirable situations occur frequently when he is involved in discussion with fellow employees, because of his lack of tact and argumentative attitude. I was aware of particular instances where this was involved also, although Mr. Noffke, his supervisor, had had more experience in this area. Under adverse conditions his response is uncooperative and often in an abusive manner. The I feel is a true statement of some of the situations that I was aware of. Mr. Heck's performance has demonstrated that he is uncooperative and sarcastic in dealing with co-workers and in conclusion, his ability, conduct and general character are such that the employee be separated from Federal service. Basically, this was our judgment. We feel that this is proper; we spent considerable time counseling the gentleman.

Mr. Walsh: I move to strike all these comments. It isn't responsive to the question propounded in this case.

Mr. Lennon: Mr. Milne, did you discuss this probationary period and appraisal with Mr. Heck?

Mr. Milne: Yes sir.

Mr. Lennon: Would you tell the Examiner briefly what was the substance of this discussion you had with Mr. Heck?

Mr. Milne: The substance of the discussion was basically that because of his attitude with his co-workers and with others we could not recommend that he be retained in the Federal service. We had pointed this situation up to him in January, had an extensive talk with him at that time. He indicated an awareness of the problem, he indicated an awareness to correct. Initially he did respond in the matter. The 24th of January when we looked at the situation again with his supervisor again, he felt that the man had showed improvement, and indicated to me he was willing to continue with him in the Branch. After that period, however, additional instances arose which showed very positively to us that Mr. Heck had again reverted to the type activity

that had initiated our initial get-together in January. Based on this, the performance appraisal was prepared and given to Mr. Heck.

Mr. Lennon: I believe that's all.

Mr. Carlson: Any further questions?

Mr. Walsh: On the record, Mr. Examiner, we want to move to strike all the evidence with respect to performance readings or records for the reason that it's not in issue in the proceedings. The issue being the charges contained in the letter of 7 July 1964. The testimony with respect to performance and general statements of this witness, Milne, are outside of the scope of inquiry in this hearing.

Mr. Carlson: We will enter that into the record for this hearing, Mr. Walsh. Any further questions?

Mr. Walsh: I have some questions, yes. Mr. Milne, are you a registered professional Engineer?

Mr. Milne: No sir.

Mr. Walsh: Have any of the Engineers hired since August 1963 been allowed to absent themselves for personal reasons?

Mr. Milne: Will you repeat that, please?

Mr. Walsh: Have any of the Engineers hired since August 1963 been allowed to absent themselves for personal reasons?

Mr. Milne: Yes, we have a leave system that allows for sick leave and personal leave.

Mr. Walsh: Have they always been either charged to annual leave or had their pay reduced for the time of these absences?

Mr. Milne: We have in our organization a system of compensatory time which in effect works this way. If a gentleman has to work overtime at the end of the day it is unannounced overtime. A job develops in a particular hurry we do have occasion to allow them to take compensatory time off. Yes, this -

Mr. Walsh: Was Paul H. Noffke among those so favored?

Mr. Milne: Since August?

Mr. Walsh: Yes.

Mr. Milne: I don't recall off hand. Can we ask Mr. Noffke or would that be -

Mr. Carlson: I'm not sure that this is really relevant to what we're doing

here. The amount of leave that certain individuals may have had, this leave is granted by the supervisor under certain conditions.

Mr. Walsh: Yes. I am trying to show here that there has been wide discretion and favoritism which wasn't allowed Mr. Heck, and he has been under strict surveillance here apparently under the gun here continuously since he got on the Island here. That isn't true as to others. That is the point of this.

Mr. Carlson: It's not normal to go into great detail on leave records within a cost center. I don't think that this would be available in Mr. Noffke's case without going back and looking at the records that are available.

Mr. Walsh: Do you recall the incident of the time card initials 16th of December 1963?

Mr. Milne: I recall the incident, but I was not directly involved, but I recall the incident, no, but I recall the incident.

Mr. Walsh: Were you present that day?

Mr. Milne: What was the date?

Mr. Walsh: 17th of December 1963.

Mr. Milne: I would have to check on that, I know the incident was reported to me.

Mr. Walsh: But you weren't present or didn't participate in that?

Mr. Milne: Not as a direct participant, no, and I may have been on travel at that time.

Mr. Walsh: Within your knowledge, was Mr. Heck ever allowed either time or money to accomplish his move to this area?

Mr. Milne: I think the personnel records would indicate that. I'm not in a position to answer you. Again these things are handled through the Personnel Office.

Mr. Lennon: May I ask, why this question?

Mr. Walsh: Well, yes. It goes with the question of whether or not Mr. Heck received the same treatment as others.

Mr. Lennon: Are you aware that the statute has been changed with the time that Mr. Heck worked here? That there is a broader allowance now for moving people in that could very well account for this instant.

Mr. Milne: As I recall the situation, Mr. Heck actually reported in to us from a local area. Again, personnel records would be the best source for that information.

Mr. Walsh: Do you recall the day of the incident with respect to the alleged insubordination to Mr. Sedlock?

Mr. Milne: I remember Mr. Sedlock commenting to me on it in informal sense, yes, I was aware of it.

Mr. Walsh: What was said?

Mr. Milne: What was said?

Mr. Walsh: Yes sir.

Mr. Milne: Mr. Sedlock reported to me that the attitude of Mr. Heck was in his opinion insubordinate.

Mr. Walsh: In what respect?

Mr. Milne: That he hadn't done what Mr. Sedlock had asked him to.

Mr. Walsh: What hadn't he done?

Mr. Milne: Well, frankly I didn't get into the discussion with Mr. Sedlock to the depth that would develop this type detail. I depend on Mr. Noffke as Branch Supervisor to primarily supervise these things.

Mr. Carlson: Mr. Walsh, I believe the record will show earlier this morning that when Mr. Sedlock was on the witness chair that those details are already part of the record.

Mr. Walsh: Was not Mr. Heck on temporary duty assignment only for more than ninety days to the Combat Vehicle Branch?

Mr. Milne: Would you repeat that?

Mr. Walsh: Well, was Mr. Heck on temporary duty assignment for more than ninety days to the Combat Vehicle Branch until February 1964?

Mr. Milne: Was he on temporary assignment to the Combat Vehicle Branch?

Mr. Walsh: That's right.

Mr. Milne: He was assigned to the Combat Vehicle Branch.

Mr. Walsh: Was it temporary duty?

Mr. Milne: To my knowledge, no.

Mr. Carlson: What is the relationship to the temporary or permanent question, Mr. Walsh?

Mr. Walsh: Well, I understand it he was on temporary duty for ninety days prior

to February 1964. Can you answer that question?

Mr. Milne: To the best of my knowledge Mr. Heck was under the direct supervision of Mr. Noffke during his employment with us.

Mr. Walsh: Was Mr. Heck permanently assigned to the Combat Vehicle Division?

Mr. Milne: Mr. Heck was a temporary employee on a probationary period, he was assigned to the Combat Vehicle area under Mr. Noffke's supervision while he was with us. I don't quite think that I appreciate what you trying to get across to me, sir.

Mr. Walsh: Was there a formal effective date of a permanent assignment to the Combat Vehicle Division.

Mr. Milne: I would, yes, there must have been.

Mr. Walsh: When was it?

Mr. Milne: I don't know. I can get the records from personnel and find out for you.

Mr. Walsh: Alright, sir.

Mr. Milne: Well, now on this record from personnel, do you want me to get it personally or do you want to get it?

Mr. Carlson: At this point in time it hasn't been requested.

Mr. Walsh: I make the request that the record be made available and made a part of this record.

Mr. Carlson: We'll research it from personnel and insert it at this part of the record, if this is agreeable to you?

Mr. Walsh: Yes sir.

For the Record: Check of Mr. Heck's 201 file in personnel reveals the following information: a. Notification of Personnel Action, dated 9-6-63, shows the appointment of Mr. Heck to the position of Industrial Engineer, Job No. 1019, and assigned to the Small Arms Branch. b. The new employee orientation was given to Mr. Heck by Mr. Noffke on 9-16-64. c. SF-52, Request for Personnel Action, dated 2-11-64, shows the reassignment of Mr. Heck from the Small Arms Branch to the Combat Vehicle Branch.

Mr. Lennon: What purpose is this? If Mr. Heck wants to explain something, you can step out in the hall. I presume he has something in mind.

Mr. Carlson: I don't think that is necessary. They could do it right here.

Mr. Walsh: Who was Mr. Heck's supervisor?

Mr. Milne: Mr. Noffke.

Mr. Walsh: That's all.

Mr. Carlson: I believe that concludes management's case.

Mr. Lennon: Right.

Mr. Carlson: It is now a quarter to twelve and we have concluded Management's case. I would like to suggest that we break for lunch and return with the Appellant's case after lunch.

Mr. Lennon: Should we just call Mr. Wehking perhaps so he wouldn't have to come back?

Mr. Walsh: It will be brief. There won't be very many questions.

Mr. Carlson: This is agreeable with me. I thought that between the two -

Mr. Lennon: This is agreeable with me. Are there any further witnesses this afternoon? I'm not clear on that.

Mr. Walsh: Just one possibly.

Mr. Carlson: The Appellant himself.

Mr. Lennon: I would prefer to call Mr. Wehking now.

Mr. Carlson: Alright, let's do that. If this is agreeable with everybody.

Mr. Carlson: Mr. Wehking, you have been previously sworn in.

Mr. Walsh: Please state your name.

Mr. Wehking: My name is Wehking, Henry C.

Mr. Walsh: Where do you live, sir?

Mr. Wehking: 2920 - 43rd Street, Rock Island.

Mr. Walsh: What is your employment?

Mr. Wehking: I am a Traffic Specialist for the Army Weapons Command.

Mr. Walsh: Do you know the Appellant, Theodore G. Heck?

Mr. Wehking: Yes sir.

Mr. Walsh: When did you first meet him?

Mr. Wehking: When he first came.

Mr. Walsh: That would be sometime in September 1963?

Mr. Wehking: Unless I go back to records, I couldn't say what the date was.

Mr. Walsh: To the best of your recollection, would it be about that time?

Mr. Wehking: Yes sir.

Mr. Walsh: Were his offices in connection with your office or in the vicinity of it?

Mr. Wehking: You mean our physical location?

Mr. Walsh: Yes.

Mr. Wehking: Yes, he was about four desks behind me.

Mr. Walsh: Did you have occasion to see him quite frequently?

Mr. Wehking: Yes, quite frequently.

Mr. Walsh: Did you work with him?

Mr. Wehking: Yes.

Mr. Walsh: When did you work with him? When did you first have some connection with him in official work?

Mr. Wehking: You are getting back to dates. I couldn't do you a bit of good.

Mr. Walsh: Well, to the best of your recollection.

Mr. Wehking: I would say that it was shortly after he came with the Directorate.

Mr. Walsh: Was he intimately concerned with the Program Management of the First Destination Transportation?

Mr. Wehking: That is the area in which we worked together.

Mr. Walsh: What were his duties if you know?

Mr. Wehking: I don't know.

Mr. Walsh: Did he work very closely with you for an extended period of time?

Mr. Wehking: Yes, we worked very closely from the time he had taken over this position he had there, whatever it was, until he left.

Mr. Walsh: That would be from approximately from the beginning of his tenure in September 1963 to approximately August 1964. Does working comprise of five days a week over here?

Mr. Wehking: That's right.

Mr. Walsh: During that period of time, did you observe Mr. Heck almost daily?

Mr. Wehking: We had contacts almost daily, yes.

Mr. Walsh: Did you have contact with him with respect to official business?

Mr. Wehking: It was all official business.

Mr. Walsh: What in your observation was his demeanor and attitude?

Mr. Wehking: Toward his business?

Mr. Walsh: Yes.

Mr. Wehking: He was putting in a great deal of time and effort in his particular area. I assumed that one of his jobs was to protect the Government's interest in First Destination Funds. And he did that.

Mr. Walsh: In your observation, was his attitude good toward his job?

Mr. Wehking: Very good.

Mr. Walsh: Did you ever observe him to be vociferous or loud in his dealings with others?

Mr. Wehking: That I couldn't say. My back is to him, and I don't know what went on.

Mr. Walsh: Well, did you ever hear him?

Mr. Wehking: To me, no.

Mr. Walsh: Did you ever hear him in a loud voice?

Mr. Wehking: I paid no attention. I couldn't say that I did.

Mr. Walsh: Was he belligerent at anytime?

Mr. Wehking: To me, no.

Mr. Walsh: And was he belligerent to others, sir?

Mr. Wehking: I couldn't say.

Mr. Walsh: In your observation, was he?

Mr. Wehking: As I said, that my observation was limited to looking one way and Mr. Heck's was in behind me.

Mr. Walsh: How far apart would you be?

Mr. Wehking: Four desks.

Mr. Walsh: Four desks apart. In other words, you were in that immediate area for the whole period of this tenure of this man's employment?

Mr. Wehking: I would say so, yes.

Mr. Walsh: A great portion of it at least?

Mr. Wehking: Yes.

Mr. Walsh: Would you say that he was cooperative and respectful of the Federal service, that is of the Weapons Command?

Mr. Wehking: Yes.

Mr. Walsh: Was he cooperative in things that you asked him to do?

Mr. Wehking: Yes, very cooperative.

Mr. Walsh: What things would you ask him to do?

Mr. Wehking: Well, one of his problems would be to come up with his funding on particular items that he had responsibility for. I assume that it was his responsibility, and he would come over for assistance in coming up with budgeting of these various funds. In certain instances the information that he had wasn't sufficient for me to make an analysis. I would call his attention to his missing a little bit here and missing a little bit there, and I would ask him to get more of the facts. He was very cooperative.

Mr. Walsh: Was he insubordinate?

Mr. Wehking: Not as far as I'm concerned.

Mr. Walsh: Were you in a superior capacity at anytime?

Mr. Wehking: No, I am in a consultant capacity.

Mr. Walsh: Was he rebellious to orders and directions by you?

Mr. Wehking: I had no authority to give him directions, but there was no sign of any rebellious action to any request that I placed with him.

Mr. Walsh: Was he helpful in the work that you had him do?

Mr. Wehking: He was very cooperative and helpful.

Mr. Walsh: How often during that period would you have Mr. Heck do work for you and aid you in your consultant capacity?

Mr. Wehking: Well, let's put that around the other way. He would come to me for the assistance, I would give him that assistance according to the facts as he presented them. How often, did you say?

Mr. Walsh: Yes sir.

Mr. Wehking: Several times a week, sometimes daily. That varies.

Mr. Walsh: Thank you, that's all.

Mr. Carlson: Any questions?

Mr. Lennon: No.

Mr. Carlson: I would like to ask a couple then, if you have none. Hank (Mr. Wehking), you indicated that you were four desks from the area of Mr. Heck's desk?

Mr. Wehking: Well, I am under oath and all that sort of thing, I don't know whether it's four or five, but it's in that immediate area.

Mr. Carlson: Approximately?

Mr. Wehking: That's right.

Mr. Carlson: The thing I am trying to establish in my mind is if there was a boisterous or a loud display of contacts that four desks away is not very far.

Mr. Wehking: That's true, but Bill (Mr. Carlson), the work I do requires concentration. We have a lot of cackling going on around there and if you don't learn to cut that out you don't get much done. So that in itself wouldn't mean much.

Mr. Carlson: Let me put it in two other ways then, if I can. Had such a condition prevailed, do you think you would have been aware of it?

Mr. Wehking: Possibly. Not necessarily.

Mr. Carlson: In other words, it could have prevailed and you were not aware of it?

Mr. Wehking: That's right. I crawl in my shell, I don't pay too much attention.

Mr. Carlson: I have no further questions. Are we finished then?

Mr. Walsh: Let me add this. Mr. Wehking, do you know Mr. Noffke and you know Mr. Milne, Mr. Sculley, Mr. Sedlock, you know Mrs. Linn, Mrs. Efaw, Mrs. Catherine Efaw?

Mr. Wehking: Yes. (To all of these).

Mr. Walsh: Did you ever hear in your hearing any subordination of the part of Mr. Heck toward any of these people?

Mr. Wehking: I was not aware of any conflicts here of personalities until a couple of days before Mr. Heck left.

Mr. Walsh: You didn't hear anything? Were you on duty everyday, five days a week during that period?

Mr. Wehking: Oh, yes. That was not part of my job and they don't apparently consult me in any of their personality differences.

Mr. Walsh: But you were not absent on leave anytime from September 1963 to August?

Mr. Wehking: Oh, yes, I was on leave approximately four weeks at different times.

Mr. Walsh: But all other times you were not absent by reason of sickness or anything?

Mr. Wehking: No.

Mr. Walsh: All other times you were on the job, five days a week?

Mr. Wehking: That's right.

Mr. Walsh: You had a chance to observe Mr. Heck everyday? And to observe these other people everyday that I have named here as witnesses for the Management, and you saw no insubordination or no lack of cooperation on the part of Mr. Heck?

Mr. Wehking: To me, no, I saw none.

Mr. Walsh: That's all, sir.

Mr. Carlson: It is now practically twelve. You have no further witnesses except Mr. Heck. I would suggest that this would be a good time to break and we will resume again after lunch and you can present the balance of your case. One o'clock ought to be ample time unless the gentlemen would rather get started earlier. Are you agreeable to that?

Mr. Walsh: Whatever you say.

Mr. Lennon: I think that I had better say one, because I have to report back to my office if there is some phone call I have to make. Everybody is back to work at a quarter to one.

Mr. Carlson: I will establish one o'clock then.

Mr. Carlson: The hearing of the Theodore G. Heck case is now resumed at one o'clock on 30 September 1964. We will continue with the presentation of the Appellant's case. Will you please continue, Mr. Walsh?

Mr. Walsh: Yes, Mr. Examiner. We'd like to call Mr. Theodore G. Heck.

Note: Mr. Heck was previously sworn in a group.

Mr. Walsh: Will you please state your full name?

Mr. Heck: Theodore George Heck.

Mr. Walsh: Where do you live?

Mr. Heck: 4011 - 7th Avenue, Rock Island.

Mr. Walsh: How old are you?

Mr. Heck: Forty-three.

Mr. Walsh: Are you a native of Illinois?

Mr. Heck: Born in Illinois, yes.

Mr. Walsh: What's your original home base?

Mr. Heck: Princeton, Illinois was the place of birth.

Mr. Walsh: What education have you had?

Mr. Heck: Well, Princeton High School, Purdue University. I was a Bachelor of Science and Mechanical Engineering with additional study at various places following graduation at Purdue. Mechanical Engineering.

Mr. Walsh: You hold the one degree from Purdue University?

Mr. Heck: That's the only degree I have.

Mr. Walsh: Did you take post graduate work at other schools?

Mr. Heck: Yes, I did.

Mr. Walsh: What were they, briefly?

Mr. Heck: Well, I took some graduate work at the University of Washington.

Mr. Walsh: In the Engineering line?

Mr. Heck: No, in Business Administration.

Mr. Walsh: Where else?

Mr. Heck: Well, I have taken various courses. I'm not exactly sure whether this last one I took was an extension course from State University of Iowa, an extension course given here at the Arsenal last spring.

Mr. Walsh: What line of work?

Mr. Heck: That was in Industrial Engineering.

Mr. Walsh: Do you hold licenses as an Engineer in any one state or more?

Mr. Heck: I'm registered as a professional Engineer in the State of Michigan and the State of Washington.

Mr. Walsh: What has been your employment prior to coming to the Weapons Command?

Mr. Heck: I've been employed as an Engineer.

Mr. Walsh: From the time of your graduation from Purdue?

Mr. Heck: Basically, yes.

Mr. Walsh: For approximately ten years prior to coming to the Weapons Command, where were you employed? Just going back briefly.

Mr. Heck: Approximately ten years, essentially for the past few years before coming to the Weapons Command, I was self-employed as an Engineering Consultant out of Seattle and prior to that had been with the Boeing Airplane in Seattle.

Mr. Walsh: How long were you with the Boeing people?

Mr. Heck: As I recall, about six years. I think it was.

Mr. Walsh: Now when did you first come to the Weapons Command here on Rock Island Arsenal?

Mr. Heck: I was first employed in September 1963.

Mr. Walsh: How long were you here?

Mr. Heck: How long was I here?

Mr. Walsh: Yes.

Mr. Heck: I have been here since.

Mr. Walsh: Did your tour of duty here terminate?

Mr. Heck: I was employed until the 18th of August when I was terminated by this action.

Mr. Walsh: Now, when you first sought employment, what rating were you given?

Mr. Heck: I was a GS-12 Industrial Engineer.

Mr. Walsh: What was your salary?

Mr. Heck: Salary, as stated on the termination notice, was \$9,980 per annum.

Mr. Walsh: And your position was designated as that of an Industrial Engineer?

Mr. Heck: Number 1019.

Mr. Walsh: Your rating was actually GS-896-12?

Mr. Heck: Dash 12.

Mr. Walsh: Dash 12, yes. Now, when you first entered upon your duties, what work were you assigned to?

Mr. Heck: Well, I was initially assigned to the Small Arms Branch of the Production Planning Division of the Procurement and Production Branch of the Directorate of the U. S. Army Weapons Command.

Mr. Walsh: What kind of work did you do? What were your duties?

Mr. Heck: Almost immediately on arrival I was placed on a temporary assignment to the Combat Vehicle Branch of the same Production Planning Division.

Mr. Walsh: How long did you remain in that temporary status?

Mr. Heck: Until sometime after the 11th of February 1964.

Mr. Walsh: Who was your immediate superior during the temporary period?

Mr. Heck: During the temporary period?

Mr. Walsh: Yes.

Mr. Heck: My temporary supervisor was Mr. Paul H. Noffke.

Mr. Walsh: You had no permanent supervisor at that time?

Mr. Heck: My permanent supervisor was the assigned supervisor of Small Arms Branch, Mr. Paul Burkett.

Mr. Walsh: Mr. Burkett then was the permanent supervisor?

Mr. Heck: He was the one that was documented as being my supervisor.

Mr. Walsh: Was he on duty during all that time?

Mr. Heck: Except for perhaps periods of absence on leave, travel, or something of that nature.

Mr. Walsh: Was he an Engineer?

Mr. Heck: He has graduated as an Engineer, and I believe has completed part of his work toward professional registration.

Mr. Walsh: In the state of California?

Mr. Heck: I don't know in what state.

Mr. Walsh: But, Mr. Burkett was your actual permanent supervisor or superior, is that it?

Mr. Heck: That's right.

Mr. Walsh: During the temporary period?

Mr. Heck: Yes.

Mr. Walsh: Then subsequent to your temporary status, who was your supervisor after that?

Mr. Heck: I believe that sometime after the request was submitted after the 11th of February to reassign me to the Combat Vehicle Branch, Mr. Paul Noffke, became my permanent supervisor. I don't know what date after the 11th of February this was completed.

Mr. Walsh: Have you read the proposed Separation-Disqualification which was sent to you 7th of July 1964, and sent to you through the U. S. Mail?

Mr. Heck: Yes, it wasn't sent to me through the U. S. Mail, it was handed to me.

Mr. Walsh: By whom?

Mr. Heck: At the moment, I do not recall. I believe it was handed to me by Mr. Noffke or Mr. Milne. I do not recall that, technically.

Mr. Walsh: Now are you familiar with the subject matter 7th of July, paragraph

three, line two.

Mr. Heck: Paragraph three, line two.

Mr. Walsh: An incident referring to uncooperative behavior.

Mr. Heck: It says quote in Item one, Exhibit A, you objected because you were required to initial for 16 December after you had reported late for work, unquote.

Mr. Walsh: Well, we will take that one up first then apparently. Can you explain what happened on that occasion?

Mr. Heck: This, yes, I can explain what happened on 16th of December.

Mr. Walsh: Please explain your version of it.

Mr. Heck: On the 16th of December I was very simply an hour late for work. I had overslept. At the time, I did not know that my initials on the time card denoted discretionary choice between pay now or leave later. I initialed the card when asked to do so. Later I became aware of the choice available. That was the sum and substance of what happened on the 16th of December for which I was charged one hour of leave time.

Mr. Walsh: And you had no knowledge that that requirement was essential?

Mr. Heck: However, I believe that the incident that they are trying to refer to but did not quote in the quotation of the July 7th letter and in the Exhibit A item one where they say "refusing to initial off on payroll card on time charged against him, when initials were obtained it was done under extreme protest." I believe the incident that they are referring to occurred on the 27th of January. I believe this because Mrs. Linn, who was the timekeeper, has testified in the first place, she remembers apparently that two hours were charged and two hours were charged on the 27th of January, she refers to an accident scene that's involved in the even of the 27th of January. And further she remembers that Mr. Noffke concluded the incident and obtained the initial of which she did not have any particular part. On that particular incident was when I returned to work following the death of my father on Sunday the 26th of January. And in the icy early January morning, I stopped to assist another motorist who had slid off the roadway. This is the accident to which she refers and was thus delayed and was late for work almost two hours. I felt that it had been a vision practice to allow at least certain individuals to absent themselves for personal affairs and the circumstances of my late arrival, the accident, justified a similar tolerance. However, I was met by an outright demand and requirement that I initial the timecard. But, by this time I was aware that the initials on the timecard indicated only that I accepted a leave deduction; however, I also knew that if I did not initial the timecard there would be an immediate pay deduction or deduction from my pay at the next pay period, and that it would leave my annual leave credit intact. Since I had very little annual leave

anyway my choice was no initials and take the immediate pay deduction and retain the leave for future emergency. This was the choice that I wished to make, however, Mr. Noffke insisted, as he says required, that I initial and rather than fight a major battle with Mr. Noffke, which would perhaps embarrass Mr. Milne, who would have to make a decision on it, I did initial the time card and thought no more of the incident.

Mr. Walsh: On that occasion were you rebellious or did you talk in a loud, high pitched voice to Mr. Noffke?

Mr. Heck: I don't believe so.

Mr. Walsh: Was it in a normal tone of voice such as you are using now before the Examiner?

Mr. Heck: I think it was essentially the same tone of voice, modulated perhaps, because it's very quiet in here, whereas in an office situation, I don't think we attracted any particular attention. I had told Mrs. Linn, who Mr. Noffke had first sent with the time card, that I didn't choose to initial it and she apparently reported this to Mr. Noffke and he then presented himself with the time card.

Mr. Walsh: Did you intend to be guilty of insubordination in your dealings with Mr. Noffke on this subject?

Mr. Heck: I don't see that there was even a question of insubordination. I thought that I had a choice as to whether I would have a pay deduction immediately or a forfeiture of leave in the future. I believe that that is the practice.

Mr. Walsh: Just briefly, during the time that you were stopping, that was following the death of your father, is that right?

Mr. Heck: Yes.

Mr. Walsh: And you stopped to help a motorist?

Mr. Heck: Yes, my father had died on the 26th and I had gone home to Rochelle, Illinois to where my mother was and come back early on Monday morning. The roads were icy and this fellow had skidded off the side of the road, so I tried to help him get some assistance, etc., and was late. There is no question about it, I was late.

Mr. Walsh: What time of day was it?

Mr. Heck: It was between five and eight in the morning.

Mr. Walsh: And was most of the time with the exception of transportation time, engaged in helping this other motorist?

Mr. Heck: Yes.

Mr. Walsh: What did you do in the way of assisting him?

Mr. Heck: Well, I helped him to get some other people there, essentially I went over and got and, I don't know, another fellow there went down the road and first we tried to pull him out of the ditch or off the siding rather. He was half way in the ditch and then this other fellow went down and called a wrecker and we just waited around until it got there. There were no injuries involved in the thing. There was no major haste. Just a simple assistance.

Mr. Walsh: How much time was occupied in rendering your assistance to this individual?

Mr. Heck: Oh, I suppose a couple of hours.

Mr. Walsh: Now, have you examined line four of paragraph three of the Management's letter 7th of July 1964?

Mr. Heck: Line four, paragraph three states "in item two you were insubordinate when you refused to follow the instructions given to you on approximately 27th of December 1963 by Mr. E. Sedlock, the Acting Chief of the Combat Vehicle Branch."

Mr. Walsh: You've read that, can you explain your version of that incident?

Mr. Heck: Yes, and this also was coupled with the Exhibit A, item two, in which it says quote "refusing to take action on work assigned by Acting Branch Chief."

Mr. Walsh: Will you proceed and give your explanation of it?

Mr. Heck: Well, in the first place, it's only important in that the event was not recorded at the time it occurred, and the attempt to record it at a later date, is obviously been fabricated in some instances because the 27th of December I was on leave and did not contact Mr. Sedlock or any other member of the organization, actually Christmas was on December 25th last year, and I was on leave for the two following days. The 26th and 27th, December 28th was a Saturday, Sunday was the 29th, and on Monday, the 30th, I was back at work. That pretty well covers the approximate 27th of December. I wasn't even around, but I think the following was the incident to which the references supposedly intended. It occurred during an absence of Mr. Noffke, in which Mr. Emery Sedlock, Industrial Specialist, GS-13, had been designated by Mr. Noffke, as the Acting Branch Chief. Prior to leaving, Mr. Noffke gave me an assignment to complete some work for Mr. Milne and admonished me to let nothing interfere with the completion of at the earliest possible moment. While I was working at my desk, on my job, Mr. Sedlock approached with some work and asked me to start on it immediately. I told him of the assignment from Mr. Noffke, was priority, and suggested that since the work I was doing was for Mr. Milne, perhaps Mr. Sedlock would check the urgency. Mr. Sedlock then departed and did not return and never mentioned the incident again and

I presumed that he talked with Mr. Milne, and Mr. Noffke's priority was upheld. However, Mr. Sedlock's earlier testimony he remembered, apparently remembered my words in reply to his inquiry, and admittedly you can sometimes remember the words when you can't remember the dates. He said that my reply was quote, "it's as simple as that, I don't know," unquote, which may have been my exact words, but they no doubt expressed the extent of my knowledge but certainly not a refusal to follow any instructions of his.

Mr. Walsh: Did you indulge in any insulting language or sarcastic tone of voice in your dealings with these men on this occasion?

Mr. Heck: I don't think that a statement, even a repeated statement that I don't know when a job will be completed, it's the only way I can state it. If I don't know, I say I don't know. I really don't have much choice in my words, either I know or I don't know. I can give him an answer, a date perhaps, or whatever, but if I don't know, I can say merely I don't know.

Mr. Walsh: Were you belligerent in any way with your dealings with these men on this subject?

Mr. Heck: There was no particular, no, I was not belligerent, there was no reason to be belligerent with Mr. Sedlock. I mean he asked me to do something, I had a hot job, and apparently, as far as I was concerned, he recognized that it was a hot job, and he asked me to do something, I gave him an answer as to when it would be done, apparently, not knowing when it would be done, and telling him that, there was no reason for belligerence or anything else. He didn't press the point. He didn't even return.

Mr. Walsh: Did you refuse to take action to anyone? Did you actually refuse?

Mr. Heck: I didn't refuse to take action, I don't believe that Mr. Sedlock said that I refused to take action, he merely said that my statement was when he required as to when it would be done, that I didn't know.

Mr. Walsh: Did you exhibit any evidence of insubordination in your dealings with these men on this subject?

Mr. Heck: I don't think there was even a question of insubordination. He asked me a question, I gave him an answer.

Mr. Walsh: That was all there was to it, is that right?

Mr. Heck: That was all.

Mr. Walsh: Now, on paragraph 3, line 7 of management's letter, 7 July 1964, have you examined that? Will you read that?

Mr. Heck: Letter of 7 July, paragraph 3, line 7, quote, item three, you were also insubordinate by refusing to follow the instructions given to you by Mr.

J. R. Sculley, the Acting Production Planning Division Chief, the incident on 6 January 1964 between yourself and Mr. Sculley, was further documented on the memo dated 6 February 1964. Exhibit B, and in addition Exhibit A, Item 3, I believe pertains to the same thing, in which it says, quote "refusing to perform work assigned by Acting Division Chief," unquote.

Mr. Walsh: Do you have an explanation of that incident? Can you explain your version of it?

Mr. Heck: Well, the description of the incident as related in Exhibit B, written, dated 6 February, a month after the incident, is said to have occurred, and more than three weeks after the date of the date January 13 of the Exhibit A memo lacks several features. Many of which weren't known by Mr. Sculley, but surely were known by Mr. Milne, and maybe Mr. Noffke, when the memo 13 January was signed. The significant background and other features are essentially that during the fairly brief orientation period for the new Engineers in the Planning Division, several of whom arrived last fall at approximately the same time as I did, prior to the arrival of Mr. Sculley, Mr. Milne the actual Division Chief advised us that several regulations were available in his office, and that his secretary Mrs. Efaw would obtain others should they be needed. Her testimony - in her testimony today she confirmed that this was an instruction given by Mr. Milne. At the time of the incident, however, Mr. Sculley was known to me only as the new Chief of the Artillery Branch. It is unfortunate that memos designating Acting Chief's seldom complete the routing circuit until after the event has finished. I had not seen this particular item. Nevertheless, Mr. Sculley approached me - had Mr. Sculley approached me with the matter and been prepared to perform as a Division Chief, rather than to interfere and delay at a time when minutes were becoming important, this situation would not have developed. Really, the basic problem evolved from the assignment of the problem to attend the meeting, that is, at the last moment, which is not an unusual occurrence under Mr. Noffke. I was handed a draft of a revised regulation to screen for the effect on our organization and was told to represent the Branch at the meeting. Mr. Prunsk was to represent Small Arms Branch. Checking with Mr. Prunsk, I learned that he was not familiar with the details of the current regulation nor had he been given a draft of the new revision and that he was working on some other rush job at that moment. And we agreed that I would get the current regulation and study it against the draft and then with his general knowledge and such details, as I could absorb, we would make the scheduled meeting. We had perhaps an hour and a half to be ready. Well, thereupon, by virtue of Mr. Milne's instructions, I asked Mrs. Efaw to expedite getting the regulation. Exchanging some banter with her, which I am sure she did not consider particularly unusual, Mr. Sculley, out of phase with the events, and apparently very mindful of his delegated position, chose to interrupt and interject himself. Talking about Major Hanby, who would be merely another delay and ignoring Mr. Noffke and his temporary absence from the immediate area, and as I recall the approach and as I recall the attitude of one or more of those who noted Mr. Sculley's approach to my desk, in his words, it rather ran like, who the dickens does he think he is and what is he trying to do anyway?

Mr. Walsh: Now, in your concentration than by Mr. Sculley, were you sarcastic in anyway?

Mr. Heck: When Mr. Sculley was talking to me I was trying my best to ignore him completely.

Mr. Walsh: Were you trying to be insulting in anyway in your demeanor and conduct toward Mr. Sculley?

Mr. Heck: No.

Mr. Walsh: Were you in anyway insulting or insubordinate to anyone in authority at that time?

Mr. Heck: No, that I know of.

Mr. Walsh: Were you sarcastic in your conversations in the presence, or with Mr. Prunsk, or anyone else at that Directorate meeting?

Mr. Heck: No, there was no sarcasm.

Mr. Walsh: Were you sarcastic or belligerent or anyway repulsive to Mrs. Efav?

Mr. Heck: I don't believe that she found anything I said particularly repulsive or - we exchanged some banter, it's the usual line that she and I would exchange on frequent occasions.

Mr. Walsh: By banter, you just mean normal conversations?

Mr. Heck: Yes.

Mr. Walsh: And was her version of the regulation substantially correct today on the witness stand?

Mr. Heck: Yes. Yes, she was busy and she asked me to go and get it and I was in rather a rush to get prepared what should have been started a day or so prior.

Mr. Walsh: Did Mrs. Efav evidence any actual refusal or resentment of your request for the regulation?

Mr. Heck: No, she didn't have any particular resentment other than that she was busy and she didn't recognize that I was in such a rush. I had to read two regulations and compare them with less than an hour and a half to go.

Mr. Walsh: The point is did you evidence any superiority or arrogance in your request for this regulation, you, being an Engineer, and she, being a secretary?

Mr. Heck: No.

Mr. Walsh: Did you make the request in a normal tone of voice?

Mr. Heck: I believe I made the request in a normal tone of voice, and actually, I think I even reminded her after Mr. Sculley, perhaps it was after the matter was closed entirely, I reminded her that Mr. Milne had advised all the new Engineers that Mrs. Eflaw had the regulations and was in charge of them.

Mr. Walsh: Now, as to that, do you have anything else to say on that subject?

Mr. Heck: No, I think that concludes that.

Mr. Walsh: Referring to line eleven of paragraph three of Management's letter, 7 July 1964.

Mr. Heck: Paragraph three, line eleven?

Mr. Walsh: Refer to that.

Mr. Heck: It states, quote, in item four, you became indignant when informed by Mr. Paul Noffke during the early part of January that you would be charged annual leave for any time used to take your Illinois Drivers License Examination, unquote. I believe this is also referred to in Exhibit A, item four, which says quote, protesting leave time which would be charged to him if time taken for a drivers test at Rock Island, Illinois, unquote. I believe those both refer to the same incident.

Mr. Walsh: Will you give your version of the incident?

Mr. Heck: Well, I would choose, this item four, protesting is perhaps only a minor difference between "became indignant", however, there is a difference, but in any case the incident I requested to be allowed to take my Illinois State Driver's Examination under the same practice which allowed other new employees to be absent to take care of the problems which they had when they came into the area. It had essentially been the practice within the Division to allow at least certain of these new out of the area employees to absent themselves for personal reasons, trips to visit their family, house selling, house seeking, visiting their friends, family and relatives and things of that nature. I felt that I also was entitled to a certain amount of time to make adjustments to my move to the area. And I think this has been pointed out that this request to take a Driver's Test in my protest when I was advised that I must forfeit my vacation time was entirely reasonable in view of the greater fact that the successful completion of an examination by the Federal Government Examiner and the issuance a permit to operate a specified U. S. Government vehicle. This permit which was issued on 11 March, upon the written request of Mr. Noffke following a suggestion of Mr. Milne's, was obtained because it was deemed likely that I would need to drive in the line of duty. As a matter of fact, I was later issued travel orders stating that I was to use a U. S. Government vehicle for transportation. The travel order was in the air, it wasn't what we had intended, but I believe it was issued after they had checked to find out that I did have a permit to use a Government vehicle. Therefore, it seemed quite reasonable to those who ultimately

signed the travel order that I should be using a Government vehicle.

Mr. Walsh: What is the fact as to whether or not you were indignant on this occasion? Dealings with Mr. Noffke over this Driver's License program?

Mr. Heck: The fact is that I protested.

Mr. Walsh: Were you indignant, that's the question.

Mr. Heck: Inwardly I was indignant.

Mr. Walsh: Were you indignant outwardly?

Mr. Heck: No.

Mr. Walsh: Did you raise your voice?

Mr. Heck: No.

Mr. Walsh: Were you sarcastic to Mr. Noffke?

Mr. Heck: No.

Mr. Walsh: Were you belligerent in anyway?

Mr. Heck: No.

Mr. Walsh: It was just a normal discussion over the annual leave for anytime used to take the Illinois Driver's License Examination?

Mr. Heck: I just tried to persuade him that so that he would persuade his supervisor, Mr. Milne, as I understood it, that this time should be allowed. This is a normal request.

Mr. Walsh: That's all that happened at that time?

Mr. Heck: And I protested when he required that I take leave time to do this.

Mr. Walsh: And you were both newcomers, weren't you, Mr. Noffke and you, both?

Mr. Heck: Yes. I think he preceded me a week or two.

Mr. Walsh: Now, referring to line one, paragraph four of the Management's letter, 7 July. Quote, the incidents listed in the above paragraph have been discussed with you during the middle of January by Messrs. R. Milne and Paul Noffke, since the time of these discussions your attitude did improve for a period of time, but subsequently your attitude became belligerent and unco-operative."

Mr. Heck: I believe that this couples with Exhibit A, line 26, which says, "with regard to the last paragraph, since Mr. Heck's primary problem is

attitude, it is mutually agreed by the undersigned that Mr. Heck will be put on notice as to the above and the current assignment to the Combat Vehicle Branch will be continued through 24 January 1964 and the situation re-evaluated at that time. The last paragraph referred to in the quotation says, "in conclusion it is recommended that Mr. Heck be separated from the Combat Vehicle Branch." And I can only say that the incidents listed in the above paragraph, as they say it "the incidents listed in the above paragraph" were not discussed with me "during the middle of January" by Messrs. R. Milne and Paul Noffke.

Mr. Walsh: And when were they discussed?

Mr. Heck: And I further deny that my attitude became belligerent and uncooperative or that this was my attitude at any time.

Mr. Walsh: You deny that you became belligerent or uncooperative?

Mr. Heck: Yes.

Mr. Walsh: And you deny that those incidents were discussed during the middle of January?

Mr. Heck: Correct.

Mr. Walsh: Anything further on that subject?

Mr. Heck: Further, it says in this exhibit that Mr. Heck will be put on notice as to the above in the current assignment would be continued through 24 January and the situation re-evaluated at that time. Both this and the recommendation that Mr. Heck be separated from the Combat Vehicle Branch are both incorrect insofar as any actions were concerned. I was not put on notice at that time and to my knowledge, no 24 of January evaluation was ever made. I seen no memo to the effect that it was. Other things are seemingly supported by memos and I can only note that Exhibit B Memo by Mr. Sculley was dated the 6th of February, and yet this Exhibit, a memo, is dated the 13th of January. Apparently something is a little bit hay-wire on dates. And I also know that it was not until after the Form 52, dated 11 February 1964, requesting my re-assignment to the Combat Vehicle Branch was submitted and the action sometime later completed that I was actually assigned to the Combat Vehicle Branch on a permanent basis. I had been on temporary assignment since soon after my employment until at least the latter part of February. The period during which practically all the incidents referred to in this case involve. Mr. Noffke's status is merely that of a temporary supervisor. Mr. Paul Burkett of the Small Arms Branch was my permanent supervisor, although I had very little occasion to refer to him. Essentially, that my assignment to a particular Branch is a matter of record which the Examiner can no doubt look into and determine. And so I suppose that would be the way to establish this. I do know the Form 52 requesting the assignment, or at least I understand that the Form 52 requesting the assignment, was dated the 11th of

February, which was somewhat after, as a matter of fact, the only things presented that were subsequent to that were 11 March where I obtained my operator's permit for Government vehicles and the memorandums of 15 and 16 of June. Those are the only items which had to do with Mr. Noffke's or my assignment to Mr. Noffke on other than a temporary duty basis.

Mr. Walsh: In dealing with any of the officials during the period discussed in paragraph four, commencing line one, were you exhibiting insubordination?

Mr. Heck: Well, actually there were no -

Mr. Walsh: No occasion for it?

Mr. Heck: They relate certain incidents which did not happen, they speak of something here in the middle of January which just didn't occur. They, as a matter of fact, if you have the copy of that Exhibit A memo, that was attached to our letter of proposal, at the bottom, this is apparently a xerox copy that was furnished us, it says under along the line with Mr. Milne's name, it has an astrix and says copy to Mr. T. Heck and below that there is a second astrix and it says copy not furnished, but employee did read above statements, Exhibit A. I think perhaps Mr. Noffke and Mr. Milne thought they were doing something and never got around to doing it. And caught themselves at the time they sent out the proposed separation-disqualification letter and added this "copy not furnished" and then the tag line, but employee did read the above statements. I don't think that Mr. Noffke or Mr. Milne can substantiate anything about a discussion in the middle of January on this subject.

Mr. Walsh: And Mr. Milne on the stand as he testified here this morning stated categorically that he had furnished you with the copy of the above statement which is Exhibit A, is that correct?

Mr. Heck: Then he hesitated, if I remember correctly, and I think that the proposed Separation-Disqualification Exhibit speaks for itself.

Mr. Walsh: At this time, the Appellant requests a production of Form 52, dated 11 February 1964, or thereabouts.

Mr. Heck: And also the formal response to that which requests my reassignment to the Combat Vehicle Branch from the Small Arms Branch.

Mr. Walsh: And the Appellant at this time offers in evidence as a part of this record, a Memo for Record, 13 January 1964, that portion of it which shows copy to Mr. T. Heck after the astrix and the language after the astrix "copy not furnished, but employee did read the above statements."

Mr. Carlson: You got by me. Let's review a portion here. I want to make sure I'm getting what you're after.

Mr. Walsh: We're making an offer here to show that Mr. Milne is in error when he says he furnished a copy of this statement Exhibit A. Their own language shows that they did not furnish it.

Mr. Lennon: I think this depends on what you mean by furnish. Is the Appellant denying that he at the time was handed a copy furnished him to read, and that he turned it back, or is he saying that he never saw this copy?

Mr. Walsh: Well, it's a question of credibility of the witness is my point of the thing. He says that he furnished a copy. Now they say in writing that they didn't.

Mr. Lennon: My point is what does furnished mean? Does it mean permanent possession, or does it just mean simply did the man read it at the time?

Mr. Walsh: It means a delivery.

Mr. Heck: I did not.

Mr. Lennon: You did not?

Mr. Heck: I did not.

Mr. Lennon: That's what it says on there.

Mr. Heck: I specifically stated that.

Mr. Lennon: And you submitted it to the Examiner to that effect, that you did read it?

Mr. Heck: I have read the thing as a proposal, as a part of the proposed Separation-Disqualification.

Mr. Lennon: Would you read the note again, please?

Mr. Walsh: Copy to Mr. T. Heck. Copy not furnished, but employee did read the above statements.

Mr. Lennon: Is there a date on that?

Mr. Walsh: The, it's a part of the Memo for Record, 13th of January 1964. We will just put it on there for part of the records.

Mr. Carlson: We'll put it on there and we'll evaluate this later.

Mr. Walsh: Evaluate it when we come to it?

Mr. Carlson: Yes.

Mr. Lennon: May I ask one question at this point?

Mr. Carlson: Yes.

Mr. Lennon: Do I understand that he is entering testimony to the effect that the Appellant on the 13th of January did not see this?

Mr. Walsh: As I understand it.

Mr. Heck: Correct. One hundred percent correct. Or anytime prior to the middle of January, 24th of January, 13th of January, any such dates, all of which are mentioned in there.

Mr. Carlson: May I ask when did you first see it?

Mr. Heck: As attached to the proposed Separation-Disqualification.

Mr. Walsh: Give the date.

Mr. Heck: I don't know just exactly what date I received the Disqualification, sometime after the 7th of July.

Mr. Walsh: Letter of July 7th?

Mr. Heck: Yes.

Mr. Carlson: This is the first you had seen it?

Mr. Heck: Yes.

Mr. Carlson: That establishes the time of which the Appellant says he had seen it. Let's put it in there and go from there.

Mr. Walsh: Yes.

Mr. Lennon: My men have both testified that they handed it to him and he read it on the 13th of January. Either my men are lying or he's lying. I am going to ask the Examiner to call Mr. Milne back and put Mr. Noffke back on the stand. I think this is the whole crux of the case. Is this a lie, if it's a lie, who is telling the lie. I'm not going to stand still for the man. Somebody, either my men are lying to me or his is lying.

Mr. Carlson: If it will aid in the resolution of this case, I think it is an advantageous thing to do.

Mr. Walsh: That's up to the Examiner, we're just merely -

Mr. Lennon: I'm certainly not going to stand still.

Mr. Heck: As a matter of fact, I point out that the other, the second memo attached to and referred to in that memo, was not even written till the 6th of February.

Mr. Carlson: May I ask how much more have we got of your statement to decide whether we want to do this now or later?

Mr. Walsh: Well -

Mr. Heck: We have other points to cover.

Mr. Walsh: About thirty minutes.

Mr. Carlson: About thirty minutes more?

Mr. Walsh: Yes.

Mr. Carlson: It would seem appropriate to get right to that now. Would you have any objection to interrupting the Appellant's case to clarify this other point. Would that be satisfactory to you?

Mr. Lennon: Yes.

Mr. Walsh: Yes.

Mr. Lennon: Mr. Noffke, you have before you the Exhibit dated the 13th of January. I ask you specifically if on this 13th date of January, in cooperation of your testimony this morning, was this particular memo handed to Mr. Heck?

Mr. Noffke: It was.

Mr. Walsh: On this we will have to move to strike the answer for the purpose of objection because this is an important thing. We move to strike this testimony for the reason that it is not proper to re-direct examination. And it is an attempt on the part of the Government to merely have the last words. This witness having previously testified, as to what he is testifying to. Now he can't co-operate his own story. It's the story of this morning, of Mr. Noffke, as against the printed word in 13 January 1964 and the exclamation of Mr. Heck. It's one against the other. They can't co-operate their own testimony. That's my point.

Mr. Lennon: I'll continue the testimony on the basis that I am well aware that the rules we follow in these hearings are administrative, Management has made a decision, it is our prerogative, we have been charged here with direct falsehood. Under our rules we can proceed and present testimony, which I propose to do. And I propose to recall Mr. Milne and seek his testimony on the same thing. I think this is basic. It is entire history of this unhappy thing, and again I repeat the question.

Mr. Walsh: May the same objection without repeating, stand?

Mr. Carlson: Yes.

Mr. Lennon: Was Mr. Heck handed a copy of this particular memo on the 13th of January?

Mr. Noffke: He was.

Mr. Lennon: Do you recall what reaction Mr. Heck made now?

Mr. Noffke: This memo was handed to Mr. Heck in Mr. Milne's office at the table were Mr. Milne, myself and Mr. Heck. The bottom portion was not on the memo at this time. Mr. Heck stated that he wanted further explanation of paragraphs two and three and at that time, Mr. Milne said, we will get you that further information, and at the same time, he had talked to me in regards to putting this last paragraph on this memo. And notified Mr. Heck that he would be placed on a probationary period to the 24th of January, and re-evaluated at that time. Mr. Heck turned the copy back to us and then we in turn talked with Mr. Sculley, who was the Acting Division Chief, and had him prepare justification for the charges here in paragraph three.

Mr. Lennon: What is the date of this co-oberation with Mr. Sculley, I believe it is?

Mr. Noffke: Mr. Sculley's date is 6 February 1964, that's the reason for the delay in dates or with the dates being a later date. If you notice Mr. Sculley on his Memo for Records states during the period.

Mr. Walsh: I've got to object to this for the reason that it's not responsive to the question and he can't testify what Mr. Sculley says or did say, I don't think.

Mr. Carlson: I think that we should.

Mr. Lennon: As far as I am concerned this is enough from him and I will not call Mr. Milne at this time. I think we can stand on what Mr. Noffke has said, however, I will if the Examiner requires, get an affidavit for the record from Mr. Milne to the effect of this.

Mr. Carlson: Okay.

Mr. Lennon: I can only submit this with Mr. Walsh's permission, you understand?

Mr. Carlson: This is true. It would have to be available to.

Mr. Lennon: Do you want to cross-examine Mr. Milne on this?

Mr. Walsh: Well, in the point of time, why don't you just - I'll make objection to it.

Mr. Lennon: That's all Mr. Noffke.

Mr. Walsh: There is one question, Mr. Noffke, if I may?

Mr. Noffke: Yes.

Mr. Walsh: You state that the language at the bottom of Exhibit A, date 13 January 1964, "copy not furnished, but employee did read the above statement" that was not on there at the time you exhibited that to Mr. Heck?

Mr. Noffke: When we gave it to Mr. Heck, the "copy to Mr. T. Heck" was on there. Then he turned it back to us and then we in turn added the note "copy not received, but read by Mr. Heck."

Mr. Walsh: When did you add that? On July 7th when the letter was prepared?

Mr. Noffke: I don't remember when.

Mr. Walsh: Possibly how long?

Mr. Noffke: I would say several months afterward.

Mr. Walsh: Well, the subject Proposed Separation-Disqualification, to refresh your recollection, was 7 July 1964. Do you think you put those words on Exhibit A "copy not furnished, but employee did read the above statements" about 7 July 1964?

Mr. Noffke: Either that or prior to that.

Mr. Walsh: About that time?

Mr. Noffke: Yes sir.

Mr. Walsh: Did you put it on there yourself?

Mr. Noffke: No sir.

Mr. Walsh: Who did?

Mr. Noffke: Personnel Department.

Mr. Walsh: It was under your supervision?

Mr. Noffke: Upon my instructions, right.

Mr. Walsh: I think that's all. Alright, we'll hurry this along a little bit. Now, Mr. Heck, who was your permanently assigned supervisor on 16 December 1963? That's at the time the time card incident. Do you know?

Mr. Heck: Mr. Paul Burkett.

Mr. Walsh: And on 27 December 1963, who was your superior? The date of Sedlock's incident.

Mr. Heck: Mr. Burkett, still.

Mr. Walsh: 6 January 1964, the date of the Sculley incident?

Mr. Heck: Mr. Burkett.

Mr. Walsh: Who was the supervisor on 13 January 1964, the occasion of the memo by Hoffke and Milne?

Mr. Heck: Well, at the date of the memo -

Mr. Walsh: Who was your supervisor?

Mr. Heck: On the 13th of January, Mr. Burkett was my supervisor.

Mr. Walsh: Give his full name.

Mr. Heck: Paul Burkett.

Mr. Walsh: On the 26th of January 1964, the date of your father's death, who was your permanent supervisor?

Mr. Heck: My permanent supervisor was Mr. Paul Burkett.

Mr. Walsh: And on the 6th of February 1964, the date of the memo of Mr. Sculley, who was your permanent supervisor?

Mr. Heck: My permanent supervisor on the 6th of February was Mr. Paul Burkett.

Mr. Walsh: On 9 February 1964, the date of Exhibit B Memo as per letter 7 July 1964, who was your permanent supervisor?

Mr. Heck: On 9 February 1964, my permanent supervisor was Mr. Paul Burkett.

Mr. Walsh: And on 11 February 1964, the date of request for reassignment of you, who was your permanent supervisor?

Mr. Heck: On the date of reassignment, 11 February, as far as I understood, my permanent supervisor was still Mr. Paul Burkett.

Mr. Walsh: On 11 March 1964, the date of the issue of the Government's Vehicle Operator's permit, who was your permanent supervisor?

Mr. Heck: As to that date, I am not sure who my permanent supervisor was.

Mr. Walsh: On 15 June 1964, the date of Exhibit C Memo, who was your permanent supervisor?

Mr. Heck: As of this time, I am not sure who my permanent supervisor was on the 15th of June 1964.

Mr. Walsh: Prior to 16th of December 1963, who was your permanent supervisor?

Mr. Heck: Prior to 16 December 1963, my understanding was that Mr. Paul

Burkett was my permanent supervisor.

Mr. Walsh: After June 15th, 1964, who was your permanent supervisor?

Mr. Heck: After June 15, 1964, I am not sure who my permanent supervisor was.

Mr. Walsh: Now, calling your attention to line four of paragraph four of Management's letter, 7 July 1964, as follows, "your lack of cooperation makes it difficult for others to work with you, fellow employees, Mr. V. W. Prunsk, J. R. Sculley, and Mrs. B. Linn, have stated that they do not wish to work with you because of your sarcastic, argumentative attitude" as documented in part of Exhibits A and B. What is the fact as to whether or not you are sarcastic or argumentative to any of these people? Prunsk, Sculley or Linn?

Mr. Heck: I do not believe that I have been particularly or I have been sarcastic, have taken a sarcastic, argumentative attitude toward Mr. Prunsk or Mr. Sculley or Mrs. Linn at any time.

Mr. Walsh: Did these people ever tell you, Mr. Prunsk, Sculley or Mrs. Linn, that they did not want to work with you?

Mr. Heck: They have never indicated that to me.

Mr. Walsh: And have they ever indicated to any of your friends here on the Arsenal within your knowledge?

Mr. Heck: No one has ever told me that they did.

Mr. Walsh: Now, referring to Exhibit A, which is a memo, 13 January, on line twenty, the following language "fellow employees in the Combat Vehicle Branch and other Branches have indicated a request for transfer would be initiated by them if they were forced to work with Mr. Heck." Do you have any knowledge of any of your fellow employees who filed any request for transfer because you were on the job?

Mr. Heck: I have no knowledge of any that filed any request for transfer because I was on the job.

Mr. Walsh: Did anyone ever tell you that they wanted you out of Government service because of your attitude, other than what's been testified to here by Mr. Noffke and Mr. Milne?

Mr. Heck: No other persons.

Mr. Walsh: And on any papers contained in the communication, 7 July 1964, or any other communication which you received from Management? Do you have any statements, affidavits, or otherwise which indicate that people would leave the service over here if you were on the job? Did you ever have knowledge of any affidavits or statements?

Mr. Heck: No.

Mr. Walsh: Are any such statements contained in the showing of 7 July 1964 for your proposed Separation-Disqualification?

Mr. Heck: Proposed Separation says and I quote "fellow employees etc.", merely what you've quoted.

Mr. Walsh: It merely contains the conclusion of Mr. Noffke based on statements unknown to him, only fellow employees both in the Combat Vehicle Branch and other Branches, have indicated that a request for transfer would be initiated by them if they were forced to work with Mr. Heck. Nothing else has been served on you?

Mr. Heck: As far as I know, no other knowledge.

Mr. Walsh: Alright, now in paragraph five of the letter 7 July 1964, line one, "your poor attitude is further pointed out in the memo dated 15 June and 16 June 1964 and attached to Exhibit C and D. Can you explain your version of that statement?

Mr. Heck: Well, this is a memo for record dated 15 June and attached to Exhibit C is essentially another unsupported allegation by Mr. Noffke and perhaps is an account of his subjected feelings rather than a factual presentation of an event. Belligerent, his word, implies actual hostilities and this certainly was not the case and that I can merely submit that the Production and Procurement Director has a specific Division, the Programs and Administrative Office which has the assigned function to maintain the accounts and prepare the reports, that were mentioned in this, these two memos actually, the 15th and the 16th, Exhibit C and Exhibit D. Mr. Hatlett, who was referred to in the Exhibit C, was the supervisor in the Finance and Accounting Division of the Comptroller and his office can, and I request that the Grievance Examiner check with these people, I suggest Mr. Dennis Hammerlinck or Mr. Dennis Otting as to the availability of the information which Mr. Noffke claims was available when he gave me an order to obtain said information. I believe Mr. Hammerlinck and Mr. Otting can show from the Plans and Accounting Department records when this information did become available. If it has even become available to this point in time. Certainly it was not available at the time Mr. Noffke's memo. I had been in constant contact with the people in that Finance and Accounting Division who received and disseminated this obligation data, and the information just didn't exist. I advised Mr. Noffke of this non-existence and pointed out that actually the function of preparing such information belonged to our sister Division in the Administrative Office and remarked that our function as Engineers was specifically stated and did not include the Accounting Activity. I don't believe belligerence entered at all. Although Mr. Noffke contentious attitude to the point of ordering that I produce this non-existent information from that organization. This was then repeated the following day. If talking about the same information, the same reports in which Mr. Hays, a fellow employee was asked to take over the

gathering of this information and he asked me for the information. I merely told him that I discussed it with Mr. Noffke on the previous day and that it just wasn't available. The Accounting Division had not compiled such information as yet. They received feeder reports from the field and compile the information and until the data IBM setup produces it, the information does not exist. So I actually did not agree to submit the information at that time or reluctantly or at any other time because I had learned from the people in the Finance and Accounting Division that prior to years of experience and patterns would be repeated the thing probably wouldn't, the information that was required to make an accurate factual report, as required by the 1083, would not probably be available for First Destination Transportation until perhaps mid-August or maybe September. It's just that type of a reporting situation that occurs in the Transportation function. This I was advised by the Finance and Accounting people. Mr. Noffke nevertheless insisted that we produce the information.

Mr. Walsh: In other words you were asked to produce things that were not available, is that it?

Mr. Heck: That's right.

Mr. Walsh: And according to Mr. Hays, you did ultimately prepare some kind of a report, is that right?

Mr. Heck: I gave Mr. Noffke a considered guess and that's the way it was explained to him, that that was what it was. It was not an accurate report as required by the 1083 regulation.

Mr. Walsh: And did you personally perform that service?

Mr. Heck: I personally put that together for him.

Mr. Walsh: And that was accepted by higher echelons?

Mr. Heck: Apparently. From what Mr. Hays tells me, or said today. It was not an accurate report and I think that this can be borne out, perhaps be borne out by an examination of Finance and Accounting records. Perhaps it has been consolidated by now to the point that where at any given date, at that time you will know what the actual obligations were and those can be compared against the report to be submitted. I am sure it would be a remote coincidence that my guess were precisely what Finance and Accounting IBM system would produce.

Mr. Walsh: Without going to detail, was any of that information classified?

Mr. Heck: No.

Mr. Walsh: Was that in the nature to show the financial status of First Destination Transportation?

Mr. Heck: It was a year-end summary of operations for the fiscal year which had closed the 30th of June.

Mr. Walsh: To show what funds were available, is that it?

Mr. Heck: What funds had been dispensed.

Mr. Walsh: What funds had been dispensed?

Mr. Heck: Technically what funds had been obligated.

Mr. Walsh: I see. Is there any other statements you have concerning the incident that Mr. Hays has testified? Does that explain all that transaction?

Mr. Heck: Yes, I did not refuse anything to Mr. Hays, I just didn't have it.

Mr. Walsh: Or did you refuse?

Mr. Heck: Not anymore than did I refuse things to Mr. Sedlock. He asked me when something, according to him, he asked me when something would be done and I simply told him I didn't know. There was no refusal involved in this. If you don't have it, you don't know. That's all you can say about it.

Mr. Walsh: There was no refusal to Mr. Hatlett?

Mr. Heck: Mr. Hatlett never asked me for anything. It was more in the other direction.

Mr. Walsh: Is there anything else you wish to state for this record?

Mr. Heck: I think what we should do is, there seems to be several of the points here that documents can support, these differences in Mr. Noffke's testimony, Mr. Milne's testimony in which Mr. Noffke says that this information was available within the Finance and Accounting Section, I think the Grievance Examiner can find documents or pursue this and determine what the actual status was. I think there is a , undoubtedly, a document which assigned me to the Combat Vehicle Branch sometime following the request. There is no particular point in getting the request for my reassignment, actually what counts is when I was actually, the effective date of my actual assignment and when that was effective, when that was published. I didn't seem to get a copy of it. So that's why I said that I did not know who my supervisor was following the 11th of February. But I think this can be established. There are undoubtedly personnel documents that the Examiner can have access to that will determine this and I suggest that those be made part of the record. To settle these little questions of who did what on what date. This also goes all the way back to 16 December in which we have a matter of a time card. I may as well establish my leave of the 27th, etc., all these documents bearing on the subject.

Mr. Carlson: When we go through the transcript we will give consideration to locating and identifying as many of those as are considered necessary. As far as making it part of the record, now we come into this thing of additional information after the close of the hearing which would have to be in affidavit form, and submitted to both of you gentlemen.

Mr. Walsh: Yes.

Mr. Lennon: I think as far as the 201 is concerned I think it is perfectly permissible for you to re-examine that and take the things from it that you need, isn't that right? This is my understanding that anything in the 201 file, Form 52?

Mr. Carlson: This is to be an up-to-date record of all events that have taken place and if they are in the 201 file, they should constitute a before the fact action, although they weren't submitted.

Mr. Walsh: That's the personal record file?

Mr. Lennon: That's the personnel file, the same as you military.

Mr. Carlson: When we get through the transcript, we will consider those items. Do you have any questions of the Appellant, Mr. Lennon?

Mr. Lennon: I don't like to get into semantics. There is a lot of talk of belligerence, sarcastic, etc. I noted in one of your first letters that came back on Mr. Kohlhammer's stationery but Mr. Heck signed it, you closed with a "I request a hearing and an opportunity to respond to the scurrilous attacks upon my professional Engineering reputation, by non-professional novitiate supervisors, Mr. Noffke and Mr. Milne." In your judgment, is this the type of thing you call not sarcastic?

Mr. Heck: I don't think that it is sarcasm, is it? In my definition of sarcasm, no.

Mr. Lennon: This wouldn't be your definition of sarcasm. I believe that's all.

Mr. Carlson: Okay. Does that conclude your case then?

Mr. Walsh: Yes.

Mr. Carlson: Okay. The next thing then on the agenda will be a summary by each side. Are you prepared to summarize, Mr. Lennon?

Mr. Lennon: Yes, I think that basically when we started off I said that we were going to rely on the charges as set forth in the 7 July letter. We've attempted to present our best testimony as to each of these incidents, unfortunately, there is no question but what we have a conflict of dates here in two or three instances. We don't think this is fatal, in one particular

instance, Mrs. Eflaw's testimony, I misunderstood the nature of her testimony or I wouldn't have called her. But other than that we presented the case on the record and are perfectly satisfied with the testimony the way it came in. I see no point in making any further comment on it, except that as I recall the record this morning, which I had Mr. Noffke read, I don't believe he read into the record, the 15th of June and the 16th of June Memo for the Records, and if there is any objection from Mr. Walsh, that is up to him, but, isn't that right, we didn't read those this morning?

No.

Mr. Carlson: Would you have any objection to reading that into the records, so that they are part of it?

Mr. Walsh: I don't suppose so, under the rules, you just put them in anyway, don't you?

Mr. Lennon: If there is no objection, why go ahead and examine for what they are worth. That's all I have, sir.

Mr. Walsh: Well, on the record, Mr. Examiner, I wish to state that I feel that there is a complete failure on the part of Management to show a centile of evidence that justifies that this man's separation from service as an Engineer, or Separation-Disqualification. The evidence is primarily in the nature of the tone of voice of Mr. Heck, as expressed by Mr. Noffke, the evidence shows conclusions, such as fellow employees, both in the Combat Vehicle Branch and other Branches, have indicated a request for transfer would be initiated by them if they are forced to work with Mr. Heck. Those things are purely conclusions and not evidence. Management has had all the facilities of Government here to subpoena any people, any employee, who was going to terminate his or her employment by reason of Mr. Heck's presence. Now, the thing that I think refutes the mannerism which is the crux of this thing gravamen of the charges. That this man is sarcastic and belligerent, he has been on the stand approximately an hour and twenty minutes and covered and refuted all the allegations contained in the letter of 7 July 1964. And on no occasion has he raised his voice or given any undo inflection which would indicate that he has a sarcastic manner or belligerent manner or a rebellious manner. As a matter of fact, his demeanor and conduct is the best reputation of these conclusions of things which have made up a greater part of Mr. Noffke's showing. He is a man who was apparently the driving force. Mr. Milne's testimony is based purely on hearsay. The other witnesses are able only to give little fragmentary things, such as Mrs. Eflaw's testimony that she was too busy to get a regulation and that he finally went and got the regulation. I can't see where there's a centile of evidence to show where there was improper conduct on the part of this man. In the way of mannerism or insubordination. If an order was given by Mr. Noffke, with respect to giving a financial report, as to the amount of money spent for the fiscal year from whatever period of time in 63 to July 1964, he sought information that was not available. And those kind of arbitrary orders are the things that cause these kind of

costly hearings without any effect. I think if anything existed here, it is a rivalry here between personalities. Mr. Noffke came about the same time. He was a neophyte, not an Engineer, of the quality of Mr. Heck. Mr. Heck came about the same time. They are vying for position possibly. The best witness in this case, disinterested witness, is Mr. Wehking, who has no interest, he is not related, he has no bias or prejudices in this thing. He was four desks away. Mr. Wehking was approximately four desks away from the other gentlemen, Mr. Noffke, Mr. Milne. They are all in the same general area. He testified that he had never heard any sarcastic remark on the part of Mr. Heck, that he was cooperative in any conferences that he had with him in respect to First Destination Transportation subject matter, that he was not belligerent, he was not sarcastic. It's not conceivable that there can be anything to a case where as an afterthought Mr. Noffke has to type in "copy not furnished, but employee did read the above statements" tack that on on 7 July 1964 on a group of charges made 13 January 1964. It shows completely that somebody is trying to make it difficult for someone without any particular reason. A refusal to initial a payroll card is based upon a choice that Mr. Heck though he had, he's not a complete moron, he's a man with a mind and has a right to inquire as to what the salary is, as to what the requirements are, in a normal tone of voice. I don't think there is anything in the failure to initial card, eventually he did it after inquiring as to which choice he had. While counsel for the Management says that we're confined strictly to the charges during the course of the hearing, I didn't object because I think to some extent it's quite important here. They bring in the rating record of this man Heck which shows that there is nothing wrong with his capability, that he is a good Engineer. According to the Government's own statement extraneous in this hearing, but as long as they brought it in I leave it in for what it's worth, and I think it's worth a lot. Now, our contention is this thing, Mr. Examiner, I know that sometimes hearings of this sort are resolved against the man who is under the gun because you're all in one department, there's disciplinary action that can be brought against witnesses who do not testify and I'm not saying that you're in anyway biased, I know you're not, but at the same time we are all human beings and this man doesn't have a lot of money to fight this thing clear to Washington and I think a thing that is as picayunish as this particular record his ought to be stopped right here and now. As I indicated in a previous hearing for Mr. Heck, Chief Justice Warren in a United States Supreme Court Case, and I can furnish it to Counsel, in a Security Case involving an Engineer, shows that as a constitutional right he has a constitutional right of profit in holding a job, such as a professional Engineer.

Mr. Lennon: Just a moment Mr. Walsh. First of all, a security hearing comes under an entirely different statute and secondly, we are dealing with a man here who is probationary period. I am perfectly familiar with the Green versus the United States or Green versus McElroy. I think is the case you're referring to.

Mr. Walsh: Yes.

Mr. Lennon: There is -

Mr. Walsh: Well, by way of dictum, at least it's a guide post for a person who spends years in training for an Engineer, or some other specialist job of that character. It takes the money and the time to perfect it, and I don't think the man ought to be discharged based upon this kind of a meager record. Certainly not one that's not even under oath. Not an affidavit attached to this letter, it's merely in letter form, based primarily on small things, small items, there is no evidence of misconduct to show that he is a bad character, that he has done anything that would bring scandal on the service or anything of that kind. He can do his job good and it's merely quibbling over a choice of whether or not he should initial a card. That's about the essence of this whole thing. And whether or not he should get information that isn't even available, but that when he did get it it was accurate and acceptable to higher echelons. It seems to me that's the kind of a man they need in Government service, not just a yes man. Out of all difference to Mr. Noffke, I think a lot of the trouble came between his inexperience with this Command. I don't know what he did before that in private life except what he said. They are both new and sometimes we get in places where they can give orders such as in civilian life on an Army post, they can become arbitrary and capricious and I think that is probably what happened here. If this man were immature and a complete offensive type, it would have been evident here in an hour and one half of testimony over this machine. He gave a, if anything he is a brilliant, methodical type of individual, which I think is the type that they can well use in some Branch. As I said at the very outset, I think this is a case of a misplaced individual with a lot of experience and ability. He's been making up financial record for the Transportation Department when possible he could be doing his regular work for which he is skilled. Engineering work, work which he was doing with Boeing Aircraft. I don't think that the Government, the greater fault here is upon the part of the Government, because they haven't made the best use of the abilities and services this man could render. That's our position.

Mr. Carlson: Does this conclude your statement?

Mr. Walsh: Yes.

Mr. Carlson: As we approach the closing of this hearing, I would like to ask you, Mr. Noffke, if there is any other additional statement that you would like to make that you feel would be necessary to complete this record?

Mr. Noffke: No sir.

Mr. Carlson: How about you, Mr. Lennon?

Mr. Lennon: No.

Mr. Carlson: Mr. Walsh, do you have any other additional statement that you consider necessary to complete this hearing?

Mr. Walsh: No, I don't think so. Those records that you will probably have produced, that Form 52, is it?

Mr. Heck: Yes, it's the 52, but it's not necessary. I don't think -

Mr. Walsh: Well, if we need some of those records that seem to be pertinent.

Mr. Heck: I think Mr. Carlson will look into whatever seems to be in dispute there.

Mr. Carlson: I would like to ask you then, Mr. Heck, for the record, do you feel that you have been given a fair hearing?

Mr. Heck: Yes.

Mr. Carlson: Okay, I'd like also to inform you that one copy of the transcript will be furnished to you if you so request to me in writing. I'd like to thank all of you for your cooperation. On that note, I'd like to say that just to let the record show that this hearing is now at 2:30, 30 September, is now closed.

PART I - INTRODUCTION

Appeal of Mr. Theodore G. Heck, Headquarters
US Army Weapons Command under CPR E2, Sec. 4/5

On 18 August 1964, Mr. Theodore G. Heck, the appellant, appealed to Brigadier General Roland B. Anderson, Headquarters US Army Weapons Command from an adverse decision dated 17 August 1964 signed by Mr. Harold Sedrel, Chief of the Personnel and Training Office. This adverse decision resulted in the Separation-Disqualification of Mr. Heck from the position of Industrial Engineer GS 896-12, Job Nr. 1019, \$9.980 per annum, effective 18 August 1964, because of an unsatisfactory attitude.

PART II - BASIS FOR ACCEPTANCE OF THE APPEAL

Removal for unsatisfactory attitude is an adverse action under CPRS 1.2 which can be appealed under CPR E2, Sec. 4. Mr. Heck was serving the probationary period of his appointment. His appeal was filed less than ten (10) days after 18 August 1964, the effective date of the adverse action.

PART III - EXAMINATION OF PROCEDURES

Advance Notice

A letter dated 7 July 1964, Subject: Proposed Separation-Disqualification, which stated four specific reasons and which was signed by Mr. Paul H. Noffke and was handed to Mr. Heck by Mr. Noffke on 7 July 1964. The four specific reasons were detailed in attachments to the letter of 7 July 1964 as Exhibits A, B, C and D. This letter also provided Mr. Heck ten (10) working days from the receipt of notice in which to answer the notice of proposed action. He was informed at this time of a specific person and place to whom his reply must be addressed.

The proposed effective date was established as 3 August 1964. The effective date was extended to 17 August 1964 by letter of 30 July 1964 to Mr. Heck and was signed by Mr. Harold Sedrel, Chief of Personnel and Training Office.

Reply

Mr. Heck's reply was in the form of a letter dated 15 July 1964 from Attorney Adolph H. Kohlhammer which stated that he had been retained by Mr. Heck. This letter denied the charges contained in the advance notice. He also demanded an early hearing.

On 22 July 1964, a letter signed by Mr. Sedrel was sent to Attorney Kohlhammer acknowledging his letter of 15 July 1964. This acknowledgement informed Attorney Kohlhammer that there is no provision for a formal hearing before a decision has been made. He was also informed of business hours of the Personnel Office and provided a phone number if he desired to set a date for a personal appearance.

On 24 July 1964, Mr. John E. Walsh, an associate attorney with Mr. Kohlhammer called Mr. Sedrel to discuss this case and make several requests.

On 29 July 1964, a letter signed by Mr. Sedrel was sent to Mr. Walsh. This letter related the 24 July phone call and also established 31 July 1964 as a date for a personal appearance prior to decision. A Record of the Personal Reply dated 31 July 1964 is contained in the case file and was signed by Mr. Walsh and Mr. George Nickell, Deputy to Mr. Sedrel.

Decision

On 17 August 1964, a letter, Notice of Decision, signed by Mr. Harold Sedrel was issued to Mr. Heck. It is evident that the Notice of Decision was received promptly, this is supported by the letter of 18 August 1964 from Mr. Heck and Attorney Walsh which referred to the Notice of Decision and which constituted a Notice of Appeal.

The information listed under Reply above definitely shows that the decision was made after consideration of the appellant's reply. The Notice of Decision also clearly states the same charges as specified in Advance Notice. August 18, 1964 was established as the effective date of Separation-Disqualification and the employees rights were identified properly.

PART IV - DEVELOPMENT OF THE EVIDENCE

The evidence in this case was developed by personal contact, phone conversation, investigation and a hearing. The case file, personnel records and regulations were available for analysis. Oral statements were obtained from supervisory officials and co-workers during the investigation which occurred during the weeks of 13 September and 20 September. A hearing was conducted on 30 September 1964 at which the Installation was represented by a supervisory official, Mr. Noffke, and a member of the Installation's legal staff and several witnesses. Mr. Heck was present with his attorney and one witness. The transcript of the hearing is attached to the case file.

PART V - THE CHARGES AND ANALYSIS OF THE EVIDENCE

Exhibit A, Item 1 - Objection to Initialing of Time Card after Reporting Late for Work

1. Mrs. Linn, a management witness, testified that Mr. Heck refused to initial off on his payroll card for 2 hours absence, gave no reason for refusal, the date of absence was not within her memory. Someone else obtained his initials. She further stated that he was rude to her.

2. There was a question by Mr. Walsh regarding whether or not Mr. Heck was advised of this requirement. Mr. Heck's Orientation, which should include this information, was conducted on 9/16/64 by Mr. Noffke.

3. Mr. Heck testified that he was late on 2 occasions:

a. On 12/16/63, late 1 hour because he overslept.

b. On 1/27/64, late 2 hours because stopped to assist a motorist who had an accident. He further stated that he was returning to Rock Island from out of town. He also stated that his father had died on the preceding day, 1/26/64.

4. Mr. Heck testified that on the first occasion of absence that he initialed the card when asked to do so. There is no evidence that Mr. Heck refused to initial his time card for leave in the amount of 1 hour.

5. Mr. Heck also testified that on the second occasion of absence, he chose not to initial his time and to take a payroll deduction, thereby saving his leave for a future emergency. NOTE: CFR L 1.8, C4, 8.2 states, "The policy of the Department of the Army is to deny the grant of leave without pay regardless of ~~deduction~~ to any employee who has an accrued and/or accumulated leave balance". This document further states, "An employee cannot demand that he be granted leave without pay except under certain conditions", none of which apply in this case.

*orientation
J.H.C.*

6. Mr. Heck testified that Mr. Noffke insisted that he (Mr. Heck) initial the time and this was done rather than go to Mr. Noffke's supervisor, Mr. Milne, for a decision. Mr. Heck also testified that his discussion of the matter with Mr. Noffke was conducted in a normal tone of voice.

7. Mr. Heck also testified that he thought that he had a choice regarding this matter.

8. The analysis of the Examiner in this regard is as follows:

a. This charge is incorrectly stated in the proposed notice, and likewise similarly referred to in the Notice of Decision in that the date of absence is obviously wrong..

b. It was stated in sworn testimony of Mrs. Linn that Mr. Heck was rude and not denied by Mr. Heck.

c. The correct method of handling leave in relation to initialing of time cards should have been part of Mr. Heck's orientation. There is no evidence to state that this explanation was provided at that time. It is logical to assume that it wasn't provided during the orientation. This is shown by the fact that it was necessary for Mr. Noffke to verify with Mr. Milne the manner in which leave should be charged as related to Exhibit A, Item 4.

d. However, of significance is the fact that Exhibit A, Item 4 which is dated 1/13/64 occurred in early January 1964 and therefore must have preceded the absence of 27 January 1964. There is no evidence that it was after 27 January 1964. Therefore, I can only conclude that even though the orientation may have omitted an explanation of initialing of time cards during periods of leave, Mr. Heck knew what was required but chose not to comply.

e. While Mr. Heck did not relate the non-compliance to his father's death, but rather to a desire to accumulate leave, it is reasonable to believe however that he was upset and that he might have reacted differently under different circumstances.

Summary:

There is evidence of rudeness to Mrs. Linn which indicates a lack of tact. However, it is my opinion as examiner in this case that this charge does not constitute a reason for separation.

PART V - THE CHARGES AND ANALYSIS OF THE EVIDENCE

Exhibit A, Item 2 - Insubordination in Not Following Instructions Given by the Acting Chief of the Combat Vehicle Branch

1. Mr. Sedlock, a management witness, testified that on or about 12/27/63 while in the position of Acting Chief of the Combat Vehicle Branch during Mr. Noffke's absence, he requested Mr. Heck to secure certain data with a target date of 2 to 3 weeks in the future. Also that about 10 days later, he (Mr. Sedlock) made a follow-up to verify the progress to date. Mr. Sedlock testified that he asked Mr. Heck as follows:

Question: How are you coming? Answer: Did not have it.

Question: When will you have it? Answer: Did not know.

Question: (Same as above) Answer: (Same as above)

Question: What do you mean "do not know"? Answer: Exactly what I said, I do not know.

2. Mr. Sedlock's testimony includes the statement that when the follow-up was made that Mr. Noffke had returned to the Branch and that he, Mr. Sedlock, was no longer acting as the Chief but that this was within the compass of his employment.

3. Mr. Sedlock also testified that the data was eventually prepared by Mr. Noffke, Mr. Wehking and himself.

4. Mr. Walsh (Mr. Heck's attorney) indicated that Mr. Heck was on leave on 12/27/63 and asked that the leave be produced and made a part of the hearing record. I, as the examiner, do not believe that this is essential in that the Notice of Decision states the charge, "on approximately 12/27/63".

5. Mr. Heck testified that prior to leaving, Mr. Noffke gave him an assignment to complete some work for Mr. Milne and admonished him to let nothing interfere with the completion of this assignment. There is no evidence that this did not happen.

6. Mr. Heck testified that when Mr. Sedlock approached him with another assignment, that he (Mr. Heck) informed him (Mr. Sedlock) of the assignment from Mr. Noffke. Mr. Heck also stated that he (Mr. Heck) suggested that Mr. Sedlock check the urgency with Mr. Milne and also that Mr. Sedlock then departed and did not return and that Mr. Heck thereby assumed that the original assignment was upheld.

7. Mr. Sedlock testified when questioned by Mr. Walsh that he (Mr. Sedlock) did not contact Mr. Milne but that Mr. Noffke was contacted when he returned.

8. Mr. Heck testified that he was not belligerent and Mr. Sedlock did not testify that Mr. Heck was belligerent or that it was or was not conducted in a normal tone of voice.

9. Mr. Sedlock further testified that he merely reported the incident to Mr. Noffke not as insubordination, only that Mr. Heck should have cooperated.

Summary:

It is apparent that Mr. Heck could reasonably assume that he should proceed with the assignment previously given by Mr. Noffke instead of the assignment given by Mr. Sedlock at that time.

However, it is also apparent when the follow-up performed about 10 days later that Mr. Noffke had returned. Also at that time, Mr. Heck did not indicate that he was still engaged in performing the original assignment. During the follow-up action, the only reply was given "I don't know" and there was complete absence of the positive indication that he was still engaged in performing the original assignment or that there was any other reason for not compliance with Mr. Sedlock's request.

Therefore, it can only be concluded that Mr. Heck definitely did not co-operate, and even though Mr. Sedlock may not have specifically considered that Mr. Heck was insubordinate, Mr. Noffke is correct in terming this charge to be insubordination.

PART V - THE CHARGES AND ANALYSIS OF THE EVIDENCE

Exhibit A, Item 3 - Insubordination in Refusing to Follow Instructions Given by the Acting Chief of the Production Planning Division.

1. This item is more fully documented in Exhibit B which shows that Mr. Heck on 16 January 1964 appeared in the office of the Chief of the above Division and insisted that the Chief's secretary Mrs. Efaw, a management witness, furnish him (Mr. Heck) with a copy of a particular regulation. Also shown is the statement that Mrs. Efaw told him where the regulations were kept. *2-7c*

2. Mr. Scully, a management witness, testified that normally each individual goes to the library and obtains the desired data, when it is not available there, proper channels exist to obtain missing data.

3. Exhibit B, which was read into the record, also states that Mr. Scully told Mr. Heck to go to the library for the data. Mr. Heck refused. Mr. Scully again told Mr. Heck to look in the library and that Mr. Heck still did not follow instructions.

4. Exhibit B also states that Mr. Heck became "very indignant", that Mr. Heck would sit at his desk and review what he had before him.

5. Exhibit B also states that Mr. Scully again told Mr. Heck to go to the library for the data.

6. Mr. Heck testified that he did not know that Mr. Scully was the Acting Chief of the Division and that Mr. Heck tried his best to ignore Mr. Scully.

7. Mr. Heck testified that when he first arrived, that the Division Chief kept the regulations in his office and that his secretary would obtain others as needed.

NOTE: Mr. Milne's secretary, Mrs. Efaw, previously testified that the regulations were (at this time) in the library and advised him to look in the library.

2. Mr. Sedlock's testimony includes the statement that when the follow-up was made that Mr. Noffke had returned to the Branch and that he, Mr. Sedlock, was no longer acting as the Chief but that this was within the compass of his employment.

3. Mr. Sedlock also testified that the data was eventually prepared by Mr. Noffke, Mr. Wehking and himself.

4. Mr. Walsh (Mr. Heck's attorney) indicated that Mr. Heck was on leave on 12/27/63 and asked that the leave be produced and made a part of the hearing record. I, as the examiner, do not believe that this is essential in that the Notice of Decision states the charge, "on approximately 12/27/63".

5. Mr. Heck testified that prior to leaving, Mr. Noffke gave him an assignment to complete some work for Mr. Milne and admonished him to let nothing interfere with the completion of this assignment. There is no evidence that this did not happen.

6. Mr. Heck testified that when Mr. Sedlock approached him with another assignment, that he (Mr. Heck) informed him (Mr. Sedlock) of the assignment from Mr. Noffke. Mr. Heck also stated that he (Mr. Heck) suggested that Mr. Sedlock check the urgency with Mr. Milne and also that Mr. Sedlock then departed and did not return and that Mr. Heck thereby assumed that the original assignment was upheld.

7. Mr. Sedlock testified when questioned by Mr. Walsh that he (Mr. Sedlock) did not contact Mr. Milne but that Mr. Noffke was contacted when he returned.

8. Mr. Heck testified that he was not belligerent and Mr. Sedlock did not testify that Mr. Heck was belligerent or that it was or was not conducted in a normal tone of voice.

9. Mr. Sedlock further testified that he merely reported the incident to Mr. Noffke not as insubordination, only that Mr. Heck should have cooperated.

Summary:

It is apparent that Mr. Heck could reasonably assume that he should proceed with the assignment previously given by Mr. Noffke instead of the assignment given by Mr. Sedlock at that time.

However, it is also apparent when the follow-up performed about 10 days later that Mr. Noffke had returned. Also at that time, Mr. Heck did not indicate that he was still engaged in performing the original assignment. During the follow-up action, the only reply was given "I don't know" and there was complete absence of the positive indication that he was still engaged in performing the original assignment or that there was any other reason for not compliance with Mr. Sedlock's request.

Therefore, it can only be concluded that Mr. Heck definitely did not co-operate, and even though Mr. Sedlock may not have specifically considered that Mr. Heck was insubordinate, Mr. Noffke is correct in terming this charge to be insubordination.

PART V - THE CHARGES AND ANALYSIS OF THE EVIDENCE

Exhibit A, Item 3 - Insubordination in Refusing to Follow Instructions Given by the Acting Chief of the Production Planning Division.

1. This item is more fully documented in Exhibit B which shows that Mr. Heck on 16 January 1964 appeared in the office of the Chief of the above Division and insisted that the Chief's secretary Mrs. Efaw, a management witness, furnish him (Mr. Heck) with a copy of a particular regulation. Also shown is the statement that Mrs. Efaw told him where the regulations were kept. *note*

2. Mr. Scully, a management witness, testified that normally each individual goes to the library and obtains the desired data, when it is not available there, proper channels exist to obtain missing data.

3. Exhibit B, which was read into the record, also states that Mr. Scully told Mr. Heck to go to the library for the data. Mr. Heck refused. Mr. Scully again told Mr. Heck to look in the library and that Mr. Heck still did not follow instructions.

4. Exhibit B also states that Mr. Heck became "very indignant", that Mr. Heck would sit at his desk and review what he had before him.

5. Exhibit B also states that Mr. Scully again told Mr. Heck to go to the library for the data.

6. Mr. Heck testified that he did not know that Mr. Scully was the Acting Chief of the Division and that Mr. Heck tried his best to ignore Mr. Scully.

7. Mr. Heck testified that when he first arrived, that the Division Chief kept the regulations in his office and that his secretary would obtain others as needed.

NOTE: Mr. Milne's secretary, Mrs. Efaw, previously testified that the regulations were (at this time) in the library and advised him to look in the library.

SUMMARY:

While Mr. Heck claims that he did not know that Mr. Scully was Acting Division Chief, Mr. Heck admits that he did his best to ignore Mr. Scully. Also, that after Mr. Scully had identified himself as the Acting Division Chief, Mr. Heck still did not make an attempt to follow instructions. Therefore, it can only be concluded that Mr. Noffke is correct in terming this charge to be insubordination.

PART V - THE CHARGES AND ANALYSIS OF THE EVIDENCE

Exhibit A, Item 4 - Indignation Related to Charging of Annual Leave Used to Take an Examination for Illinois Drivers' License.

1. Mr. Noffke, management representative, testified that Mr. Heck requested time off for the examination. Mr. Noffke verified with his supervisor the manner in which leave for this purpose should be charged. Mr. Heck was in turn informed, and that he (Mr. Heck) thought this was unfair, was prejudicial and generally didn't agree.

NOTE: CPR L 1-8, C4, 8.2 states, "The policy of the Department of the Army is to deny the grant of leave without pay regardless of duration to any employee who has an accrued and/or accumulated leave balance". This document further states "an employee cannot demand that he be granted leave without pay except under certain conditions", none of which apply in this case.

2. Mr. Noffke also testified that there was no problem involved as to whether or not Mr. Heck should be granted permission to take the required time off. It was limited to the manner in which the leave should be charged.

3. Mr. Noffke testified that Mr. Heck used a high inflection of voice, was not gentlemanly in his manner although no bad language was employed. Mr. Noffke also testified that he (Mr. Heck) didn't think he should be charged for the leave because other people take time off.

4. Mr. Heck testified that he felt that he should be allowed some time off for personal business, being new in the area.

5. Mr. Heck testified that he was not outwardly indignant, did not raise his voice, was not sarcastic or belligerent.

NOTE: All employees, including Mr. Heck, are granted leave based upon the same rules. It is apparent that Mr. Heck thought that he should have the time "free". Mr. Noffke made it a point to verify this and had no choice in the matter. The important point here is that either Mr. Noffke or Mr. Heck has committed perjury in describing the manner in which this event took place. Mr. Heck had testified that he was indignant inwardly, but not outwardly.

There is further evidence at another time of perjury regarding the time when the appellant claims that he first saw Exhibit A as shown below:

a. Mr. Noffke and Mr. Milne both testified that they had discussed Exhibit A with Mr. Heck and that Mr. Heck read Exhibit A in January.

b. Mr. Heck testified in the latter part of the hearing that he did not see Exhibit A until he received the Proposed Separation-Disqualification dated 7 July 1964 of which Exhibit A was an inclosure.

c. Mr. Noffke again took the witness chair and again testified that (a) above definitely did take place. Consideration was given to recalling Mr. Milne also or obtaining an affidavit to this effect. Neither of the latter two considerations were accomplished.

SUMMARY:

The above evidence relating to this charge and the note pertaining to evidence related Notes a, b and c above leave the examiner with the firm belief that perjury was committed by Mr. Heck in the charge of indignation.

PART V - THE CHARGES AND ANALYSIS OF THE EVIDENCE

Exhibit C - Pertains to Attitude.

1. Mr. Noffke testified that he requested Mr. Heck to contact another area to secure some required data. Mr. Noffke also testified that Mr. Heck stated that the request was an accountants' job and that he (Mr. Heck) would not do this unless ordered to and that he (Mr. Noffke) so ordered Mr. Heck.

SUMMARY:

As shown in Paragraph 1 Under Exhibit D, there appears to be some uncertainty where Exhibits C and D were separate or related events. Due to this uncertainty and the facts that both pertain to the same charge, attitude, the examiner decided to consider both exhibits to be related to a common event, and therefore, the analysis has been performed under Exhibit D.

PART V - THE CHARGES AND ANALYSIS OF THE EVIDENCE

Exhibit D - Pertains to Attitude.

1. Mr. Noffke testified that Exhibits C and D were two separate events. During cross examining by the attorney for the appellant (Mr. Walsh), Mr. Noffke stated that he was not exactly sure. A brief discussion between the attorney for management (Mr. Lennon) and the examiner regarding the necessity to determine whether these exhibits were separate events or whether Exhibit D was a repetition of Exhibit C took place, and it was ruled that the examiner would weigh and balance this difference from the transcript.

2. Subsequent testimony by Mr. Noffke stated that Exhibit C pertains to a #1083 report. Exhibit D specifically pertains to the #1083 report. Exhibit D states that a verbal #1083 report is made to AMSWE-PPA. Both Exhibits C and D pertain to 1st destination transportation.

3. Mr. Hays, a management witness, testifies that the data is forwarded in writing to higher authority in Washington.

4. Mr. Hays also testified that he (Mr. Hays) started his employment in government service on 2 March 1964 (This makes Mr. Hays a considerably newer employee than Mr. Heck). He also testified that he (Mr. Hays) reported to Mr. Heck's supervisor the refusal of Mr. Heck to provide the data, also, that in approximately one hour Mr. Heck did furnish the data, also that the data was available.

5. Mr. Heck testified that this exhibit is another insupportable allegation.

6. Mr. Heck requested that the examiner check with two other people regarding the availability of the data which Mr. Noffke and Mr. Hays had previously testified was available.

7. Mr. Heck testified that there is a delay in events occurred and events reported, and therefore the actual data to be reported was not available in time to meet the report due date.

8. Mr. Heck testified that Mr. Noffke did order him to produce "non-existent information".

9. Mr. Heck further testified that he did ultimately prepare a report which represented an estimate of events occurred and that this was accepted.

10. Mr. Heck testified that he (Mr. Heck) told Mr. Hays that he (Mr. Heck) had discussed this with Mr. Noffke on the previous day and that it just wasn't available.

SUMMARY:

Regarding the availability of the required data, two persons testified that the data was available and Mr. Heck suggested that two other persons be contacted by the examiner regarding the availability of the data. This was not done. The reason for this is a matter of relativity.

It is not unusual for a delay in "occurred events" and "reported events". There are two generally accepted ways of handling such problems:

First - Establish a mutually agreeable cut-off of "reported events" and base the actions upon this with the knowledge that the condition exists.

Second - Use the latest available "reported events" and estimate that portion represented by the delay and adjust to actual at the time of the next report period.

SUMMARY:

The particular report in question has been previously prepared satisfactorily under the same considerations without this problem.

There is no evidence that Mr. Noffke insisted on receiving a report which included any portion which represented the delay portion on an actual basis. Also, there is no evidence that Mr. Heck discussed with Mr. Noffke the problem represented by the delay portion prior to the situation which resulted in Exhibits C and D.

There is testimony by Mr. Heck that he did call this delay to Mr. Noffke's attention when the report was ultimately prepared by Mr. Heck and that Mr. Noffke accepted it on this basis.

The important item in the charge is that it becomes an intolerable situation when a supervisor must order that an individual perform an action. If a problem existed regarding the delay in reporting, Mr. Heck had responsibility to point out the potential problem before the fact, not after the fact. Mr. Noffke had the responsibility to decide on what basis to accept the report.

The fact that the report has been previously prepared and that Mr. Noffke did accept Mr. Heck's effort is evidence that the situation could have been avoided and that the charge of poor attitude is supported.

PART V - THE CHARGES AND ANALYSIS OF THE EVIDENCE

NOTE: There was additional testimony presented by Mr. Heck which related to the charges in general and are considered, by the examiner, to be significant enough to include in this report as follows:

During the latter part of Mr. Heck's testimony, a significant point was made by the appellant that he was assigned to Small Arms Branch last September under the supervision of Mr. Paul Burkett.

Also, that an SF 52, Request for Personnel Action, was issued on or about 11 February 1964 reassigning him from the Small Arms Branch to the Combat Vehicle Branch under the supervision of Mr. Burkett and not Mr. Noffke when a significant portion of the charges were claimed to have taken place.

Regarding the potential effect upon this case in the event of an additional appeal to the major Commander, it is considered essential to analyze this portion of Mr. Heck's testimony.

1. CPR D2.1-5a states that a detail is the temporary assignment of an employee, without formal personnel action and with no change in pay status, to perform duties not covered by the official job description of the position he holds under current appointment.

2. This was not the situation described in Mr. Heck's additional testimony.

3. The CPR also states that the temporary assignment of an employee without formal personnel action and with no change in pay status to perform duties covered by the official job description of the position he holds under current appointment is not a detail.

4. This was the situation described in Mr. Heck's testimony.

5. The latter situation is what is locally defined as a "loan" situation and requires no SF 52.

6. The issuance of the SF 52 was primarily to assure the ability of locating Mr. Heck in case of an emergency in the same manner as a change of address or telephone number.

7. Therefore, this portion of Mr. Heck's testimony is considered not to be relevant, and as a result the SF 52 dated on or about 11 February 1964 was not made a part of the record.

PART VI - CONCLUSION

As a result of having reviewed each charge and the evidence related to each charge, it is the recommendation of the examiner that the action taken in the Notice of Decision be sustained.

AMCPT-CR (14 Oct 64)

1st Ind

SUBJECT: Appeal of Separation-Disqualification of Mr. Theodore G. Heck

Headquarters, U. S. Army Materiel Command, Washington, D. C. 20315 1 DEC 1964

THRU: Commanding General, U. S. Army Weapons Command, Rock Island Arsenal,
Rock Island, Illinois

TO: Mr. Frank W. Carlson, Grievance Examiner

1. A preliminary review of the record of subject appeal discloses a need for additional information before it can be properly adjudicated.

2. It is requested that answers and explanations to the following questions and situations be provided:

a. Standard Forms 50 and 52 in appellant's 201 file regarding official and non-official assignments do not appear to entirely support the first line supervisor-employee relationship as discussed in the transcript of the hearing:

(1) SF 50 effective 9/13/63 is instrument appointing Mr. Heck as an Industrial Engineer GS-12, with assignment to the Planning and Production Division.

(2) The position description permits flexibility of assignment to either of the two Branches within Planning and Production Division- Small Arms or Combat Vehicle.

(3) A SF 52 dated 16 October 1963, "Nature of Action" change of address discloses Mr. Heck's assignment as being in the Combat Vehicle Branch.

(4) The incidents leading up to the decision to put Mr. Heck on "probation" (13 Jan 1964) occurred while he was officially assigned to the Combat Vehicle Branch, according to the above mentioned SF 52, and under the supervision of Mr. Noffke.

(5) A SF 52 dated 11 February 1964, Nature of Action - Reassignment, effective 23 February 1964 discloses that Mr. Heck was changed from Small Arms Branch, Paul Burkett, Supervisor to Combat Vehicle Branch, Paul Noffke, Supervisor.

(6) The Employee Performance Appraisal signed by Paul H. Noffke dated 17 June 1964, covered an appraisal period from 13 September 1963, date of appointment to 30 June 1964.

b. Was appellant officially under the supervision of Mr. Paul Noffke during the entire period of his employment in the Planning and Production Division?

AMCPT-CR (16-100)

1 DEC 1964

SUBJECT: Appeal of Separation-Disqualification of Mr. Theodore G. Heck

c. When was Mr. Paul Noffke assigned as Supervisor of the Combat Vehicle Branch?

d. Would circumstances surrounding Mr. Heck's official assignments (or loan as interpreted by the Grievance Examiner) possibly call for collaboration in the preparation of the Performance Appraisal on the part of Messrs. Noffke and Burkett, Branch Chiefs in the Planning Production Division?

e. Did Mr. Heck ever actually serve under the supervision of Mr. Paul Burkett, Chief, Small Arms Branch?

f. The record does not contain a copy of Mr. Heck's reply to the proposed action. A reply is referred to in the Grievance Examiner's Report of Inquiry as a letter dated 15 July 1964, from Mr. Kohlhammer, Attorney for Mr. Heck. Please forward a copy for inclusion in the record.

3. The employment record of this appellant discloses considerable experience in industry. Our study further discloses that the rules and regulations from which most of the incident's stem are of the type that are normally explained during a period of orientation after appointment. Did your investigation reveal the scope of Mr. Heck's orientation and the supervisory counseling and guidance normally given a new appointee during the probationary period? Your findings in this regard would contribute much to your report.

4. Your prompt response to the request for information would be appreciated.

FOR THE COMMANDER:

5 Incl
nc

N. Brandt
N. BRANDT
Acting Chief
Civilian Personnel Division

SWERI-PPE (146000)

2nd Ind

SUBJECT: Appeal of Separation-Disqualification of Mr. Theodore G. Heck

Headquarters, US Army Weapons Command, Rock Island Arsenal, Rock Island, Illinois, 8 December 1964

TO: Headquarters, US Army Materiel Command, ATTN: Mr. N. Brandt, Acting Chief, Civilian Personnel Division, Washington, D. C. 20315

1. The additional information which was requested in the 1st Ind dated 1 December 1964 is provided herein.

2. In the interests of assuring communication, each portion of this additional information shown below is related to the same alpha-numeral identification in the 1st Ind which stated the questions and situations.

2.a. thru 2.a.(6)

It is recognized that the standard forms 50 and 52 referred to and the information contained thereon leave something to be desired. During the period when these events were taking place, a very significant re-alignment of several key Branch supervisors was effected simultaneously. Also a physical movement of the Planning and Production Division from one building to another was accomplished. While this does not change the standard forms, it creates a situation which nurtures such a condition.

What is really important is that Mr. Heck is counting very heavily on the technicality that he was not assigned officially to the Combat Vehicle Branch under Mr. Noffke's supervision until 11 February 1964.

Beginning on page 70 of the transcript, Mr. Heck testified:

"It was not until after the Form 52, dated 11 February 1964, requesting my reassignment to the Combat Vehicle Branch was submitted and the action sometime later completed that I was actually assigned to the Combat Vehicle Branch on a permanent basis. I had been on temporary assignment since soon after my employment until at least the latter part of February, the period during which practically all of the incidents referred to in this case involve. Mr. Noffke's status is merely that of a temporary supervisor. Mr. Paul Burkett of the Small Arms Branch was my permanent supervisor, although I had very little occasion to refer to him."

Analyzing Mr. Heck's testimony, it will be noted that he is stretching every point that he can. He stated that he was on temporary assignment "until at least the latter part of February". Actually, the reassignment was effective immediately and that some of the clerical actions related to the SF52 occurred on 25 February 1964. The SF52 dated 11 February 1964 was primarily for the purpose of updating accounting records and the locator record files to insure the capability of locating Mr. Heck for regular and emergency reasons.

SWERI-PPE (14 Oct 64)

2nd IND

8 Dec 64

SUBJECT: Appeal of Separation-Disqualification of Mr. Theodore G. Heck

Also Mr. Heck stated that he had been a temporary assignment "since soon after my employment". He also stated that "Mr. Noffke's status is merely that of a temporary supervisor." He also admits no significant relationship to Mr. Burkett other than his "permanent supervisor". Mr. Heck did admit that he had been on a temporary assignment since soon after his employment with Mr. Noffke as his supervisor.

2.b.

Mr. Heck was not under the supervision of Mr. Paul Noffke during the entire period of his employment. However, Mr. Heck was under the supervision of Mr. Noffke beginning with the 3rd week of his employment on a continuous basis until his separation.

2.c.

The records in the Planning and Production Division show that Mr. Paul Noffke received a career conditional appointment dated 4 September 1963 and effective that date to the position of Chief of Combat Vehicle Branch.

Mr. Noffke's 201 file contains a notification of personnel action SF50 dated 15 October 1963 to serve as Chief of the Combat Vehicle Branch effective immediately.

2.d.

The Examiner did not interpret Mr. Heck's assignment as a "loan". The CPR determines what is and is not a detail. The expression "loan" is based upon FPM 300.8 dated 17 September 1964 (see Incl #6).

Messrs. Noffke and Burkett did not collaborate in the preparation of the Performance Appraisal. The reason for this lack of collaboration was due to the fact that Mr. Heck was under the supervision of Mr. Noffke for 95% of his employment and the fact that Mr. Burkett was in the process of removal from his position.

2.e.

Mr. Heck did serve the first 2 weeks of his employment under the supervision of Mr. Burkett.

2.f.

The letter dated 15 July 1964 was an initial contact from Mr. Heck's attorney. This ultimately resulted in Mr. Heck's reply to the proposed action. (See Incl #7)

3.

Mr. Heck's orientation was conducted on 16 September 1963 by Mr. Noffke and the check sheet was completed in its entirety. My investigation did reveal as noted in my report that it was necessary after the orientation for

SWERI-PPE (10 OCT 64)

2ND IND

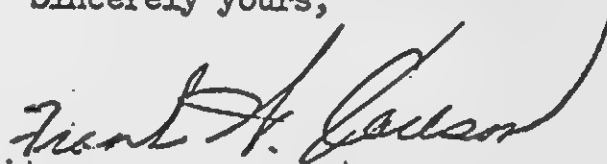
8 Dec 64

SUBJECT: Appeal of Separation-Disqualification of Mr. Theodore G. Heck

Mr. Noffke to verify with his supervisor the manner in which leave is to be charged. While all of the attributes on the orientation check sheet were completed, there remains the question regarding the thoroughness of each. Obviously at least one, that being leave, was slighted. The scope of Mr. Heck's orientation was not discussed with him by the Examiner. It is highly probable that had Mr. Noffke been completely knowledgeable of all of the attributes in full detail, that Mr. Heck could not have retained all this knowledge. The important thing is that all attributes were discussed to a reasonable depth and that Mr. Heck could and did come to Mr. Noffke for further details as required. Of significance is the fact that these problems do not prevail between Mr. Noffke and his other subordinates. *any listed at same time or subseq*

In regard to the counseling and guidance normally given a new appointee during the probationary period - the performance appraisal dated 17 June 1964 shows that on 3 occasions discussions were held with Mr. Heck. These discussions covered the problems involved and represented, on management part, a sincere effort to reconcile the problem.

Sincerely yours,



FRANK W. CARLSON
Grievance Examiner

- 7 Incls

1 thru 5 nc

Added 2 incls

6. FPM 300.8

7. Reply to proposed action

111
INKS

CODE: 32500 - PAGE: 1
HQ, U. S. Army Weapons Command
Director of Procurement and
Production
Production Planning Division
23 March 1964

PRODUCTION PLANNING DIVISION		
Supvy Ind Engr	GS-896-15	1013-S
Deputy (Military)		

Secretary (Steno) <i>Messner</i>	
GS-318-5	109
* Secretary (Steno)	
GS-318-4	381

SMALL ARMS BRANCH		
Supvy Ind Engr	GS-896-14	1014-S
Industrial Engr	GS-896-13	1015
Industrial Spec (SA)	GS-1150-13	1018
Industrial Engr	GS-896-12	1019
* Industrial Engr	GS-896-11	1727
* Industrial Engr	GS-896-9	1725
Industrial Spec (Ord)	GS-1150-12	1020
* Industrial Spec (Ord)	GS-1150-11	1178
* Industrial Spec (Ord)	GS-1150-9	1180
Clerk-Stenographer	GS-312-4	514
* Clerk-Stenographer	GS-312-3	546
* Clerk-Stenographer	GS-312-2	9998
Clerk-Typist	GS-322-3	511
* Clerk-Typist	GS-322-2	545
* Clerk-Typist	GS-322-1	9999

ARTILLERY BRANCH	
See Page 2	

* Alternate Lead-In Job.

COMBAT VEHICLE BRANCH		
Supvy Ind Engr	GS-896-14	1021-S
Industrial Engr	GS-896-13	1015
Industrial Spec (Com Veh)	GS-1150-13	1016
Industrial Engr	GS-896-12	1019
* Industrial Engr	GS-896-11	1727
* Industrial Engr	GS-896-9	1726
Industrial Spec (Com Veh)	GS-1150-12	1030
* Industrial Spec (Com Veh)	GS-1150-11	1176
* Industrial Spec (Com Veh)	GS-1150-9	1179
Clerk-Stenographer	GS-312-4	544
* Clerk-Stenographer	GS-312-3	546
* Clerk-Stenographer	GS-312-2	9998
Clerk-Typist	GS-322-3	511
* Clerk-Typist	GS-322-2	545
* Clerk-Typist	GS-322-1	9999

PRODUCTION BASE BRANCH	
See Page 2	

This chart replaces chart dated 28 June 1963.

PRODUCTION PLANNING DIVISION

CODE: 32500

 HQ, U. S. Army Weapons Command
 Director of Procurement and
 Production

 Production Planning Division
 13 August 1964

FIRE CONTROL BRANCH		
Supvy Ind Engr	GS-896-14	1505-S
Industrial Engineer	GS-896-13	1015
Ind Spec (Fire Control)	GS-1150-13	1504
Ind Spec (Ordnance)	GS-1150-12	1020
Industrial Engineer	GS-896-12	1019
Clerk-Stenographer	GS-312-4	9995
* Clerk-Stenographer	GS-312-3	9994
* Clerk-Stenographer	GS-312-2	9998

*Alternate Lead-in Job.
 No previous Chart

DETAIL OF EMPLOYEESFPM NO. 300.8
17 SEPTEMBER 1964

1. Reference is made to CPR D2.1-5.a.

a. "1-5.a A detail is the temporary assignment of an employee, without formal personnel action and with no change in pay status, to perform duties not covered by the official job description of the position he holds under current appointment."

2. The question has risen from operating officials and from within the P&TO as to whether a shift in assignment from one organization to another constitutes a detail, requiring an SF-52. The shift from one organizational segment to another is not involved in the Army definition of detail. Determination of whether a detail exists must be made on the basis of the criteria in Army definition: primarily, "Are the new duties covered by his official job description?"

3. To clarify the point, the following statements are made which parallel the statement made in the CPR:

a. The temporary assignment of an employee, without formal personnel action and with no change in pay status to perform duties covered by the official job description of the position he holds under current appointment is not a detail.

(1) Whether the temporary assignment is in the employee's own unit, or whether it is from a major segment of the installation to another is immaterial.

(2) Such an action is an appropriate management action. However, it requires no SF-52.

(3) There is no Army terminology used to define this kind of situation. We have chosen to call them "loans".

b. A temporary assignment of an employee which involves duties which would require a different job description if it were on a permanent assignment is a detail.

4. Whether an SF-52 is needed to cover a detail depends on whether the detail is likely to exceed 30 days, or is not likely to exceed 30 days.

a. The criteria is whether the detail is likely to exceed 30 days, not whether it has exceeded 30 days. The SF-52 should be initiated whenever it is contemplated that the detail will exceed 30 days. If the 30 days has been exceeded, it is obvious, then, that the SF-52 should be prepared.

b. The operating official should not wait until the 28th, 29th, or 30th day to initiate an SF-52 for the detail. As soon as it appears that 30 days will be exceeded an SF-52 is required by good administration and the Civilian Personnel Regulations of the Department of the Army.

Harold Sedrel
HAROLD SEDREL, Chief
Personnel and Training Office



UNITED STATES ARMY MATERIEL COMMAND
OFFICE OF THE COMMANDING GENERAL
WASHINGTON 25, D.C.

AMCPT-CR

JAN 12 1965

SUBJECT: Letter of Decision, Appeal of Removal Action

THRU: Commanding General
U. S. Army Weapons Command
Rock Island Arsenal, Illinois 61202

TO: Mr. Theodore G. Heck

1. Your appeal of the decision of the Commanding General, U. S. Army Weapons Command to separate you from the Federal service during probationary period for Disqualification has been thoroughly reviewed.

2. The charges upon which the separation action is based are: (a) Your attitude has not been satisfactory during your probationary period, (b) You have been uncooperative in your relations with others, (c) You have been insubordinate with your supervisor. In support of these charges specific incidents were cited to you. Your response to the charges, the Grievance Examiners Report of Inquiry, the transcript of the hearing and other papers that relate to the appeal record have been studied in detail.

3. It has been concluded that your behavior and attitudes toward supervisors and fellow employees are not in keeping with the standards of conduct expected of a professional employee. Department of the Army Civilian Personnel Regulations C2.2 set forth some basic fundamentals of on-the-job conduct which are not in the least peculiar to the Federal service, and bear quoting; ".....Each employee is expected to.....Give ready response and enthusiasm to directions and instructions received from his supervisors..... Exercise courtesy and tact in dealing with fellow workers and the public....." The same regulation also provides that: ".....Supervisors at all levels are expected to.....provide advice and assistance to individual employees who are in doubt as to whether a particular action would meet the standards of conduct expected....." For your further information it is appropriate to quote from the Federal Personnel Manual. Chapter 315-29 Subchapter 3-4 provides as follows: "Separation of Probationers. a, for unsatisfactory performance or conduct. (1) An individual selected for appointment through

competitive examination is presumed to possess the skills and character traits necessary for satisfactory performance as a career employee. However, that presumption must be verified through demonstrated capacity during probationary period. If the appointee fails to demonstrate these characteristics after full and fair trial, his separation for disqualification is proper. Such action may be based upon deficiency in duty performance, lack of aptitude or cooperativeness or undesirable characteristics,

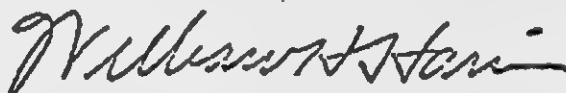
4. Analysis of the record discloses that you placed considerable emphasis and importance on the fact that you are a Registered Professional Engineer. You no doubt have reason to be proud of this status, however, this recognition does not per se, serve as evidence of technological superiority, neither does such recognition grant one license to look upon non-registered Engineers as non-professionals or to disregard rules of conduct and courtesy.

5. The probationary period is an extension of the examining and suitability determination process for the selection of Federal personnel. Accordingly, it has been concluded that the charges as substantiated are serious enough to support the decision that you have failed to measure up to the standards of conduct expected of an employee during a probationary period.

6. Based upon the foregoing analyses and discussion, it is the decision of this Headquarters that the penalty of dismissal is warranted and your appeal for restoration to duty is denied.

7. Should this decision not be acceptable to you, Department of the Army Regulations provide that you may request a review by the Secretary of the Army. This may be accomplished by filing a written request with the Commanding General, U. S. Army Weapons Command, Rock Island Arsenal, Illinois, within ten (10) calendar days of the date you receive this decision.

FOR THE COMMANDER:



WILLIAM H. HARRIS
Brigadier General, USA
Director of Personnel & Training

788-7007
 TELEPHONE ~~XXXXXXXXXX~~

4011 Seventh Ave.
~~XXXXXXXXXXXXXXXXXX~~

Certified Mail
 # 825704 (ret. rcpt)

THEODORE G. HECK
 Registered Engineer
 Mich. 9572 Wash. 5970
~~XXXXXXXXXXXXXXXXXX~~
 Rock Island, Ill. 61201

28 Jan 1965

TO: Commanding General,
 U. S. Army Weapons Command,
 Rock Island Arsenal, Illinois

Subject: Request for Review of Letter of Decision, Appeal
 of Removal Action - AMCPT-CR, 12 Jan 65

1. In accord with paragraph 7 of U.S. Army Materiel Command
 letter AMCPT-CR, dated 12 Jan 65, Subject: Letter of Decision,
 Appeal of Removal Action, sgnd William H. Harris, Brig Gen, USA

I do hereby request a review by the Secretary of the Army
of the unacceptable decision stated in paragraph 6 of that letter.

2. Further, I request that I be granted sufficient time to
 prepare and submit to the Secretary of the Army a brief in
 which I will review the above letter, the inclosure "Report
 of Inquiry" transmitted to me with that letter, and the items
 to which they specifically and by inference refer.

3. Your transmittal, dated 20 Jan 65, was received on 21 Jan 65;
 thus this request is within the ten calander days specified by
 General Harris.

4. Please advise status of my again repeated request (25 Jan 65)
 for copies of the rules and regulations pertinent to my case.

Yours,

T.G. Heck, P.E.

[GOVERNMENT'S EX. 2]

CHS:LLW:seg

June 2, 1965

Mr. Theodore G. Heck
4011 Seventh Avenue
Rock Island, Illinois 61201

Dear Mr. Heck:

This is with reference to your letter of May 26, 1965, appealing the action of the United States Army Weapons Command, Rock Island Arsenal, Rock Island, Illinois, in terminating you from employment on August 18, 1964.

As I wrote you on December 10, 1964, the Commission regulations provide no avenue of appeal to the Commission from the action of an agency terminating an employee during his probationary period for what the agency believes to be unsatisfactory services or conduct. The only appeal route you might have had would be through the grievance procedures of the Department of the Army, which apparently you pursued. Even if the statements made in your letter were found to be true, the Commission would have no appellate authority to instruct your restoration to duty.

You asked for a copy of the regulations pertinent to your appeal. The portion which relates is in Subchapter 8-4a(3) of Part 315 of the Federal Personnel Manual, which reads as follows: "When separation action is based entirely on deficiencies in performance or conduct after entrance on duty, the probationer is notified in writing as to why he is being terminated and the effective date of the action. The information in the notice as to why he is being terminated must, as a minimum, consist of the agency's conclusions as to the inadequacies of his performance or conduct; it need not require complete and specific reasons as in the case of career or career-conditional employees who have completed their probationary periods and have competitive status. The employee is not given a right of reply."

Lacking jurisdiction to take any action in your case, a more favorable reply cannot be made to your letter.

Sincerely yours,

J. A. Connor
REGIONAL DIRECTOR

Certified Mail
No. 033167
(return receipt)

THEODORE E. HECK

Registered Engineer

Mich. 9572

Wash. 5970

~~XXXXXXXXXXXXXXXXXXXX~~

Rock Island, Ill. 61201

Director, Chicago Region
U.S. Civil Service Commission
Main Post Office Building
Chicago 7, Illinois

26 May 1965



Subject: Notice of Appeal from Decision in respect
Separation-Disqualification of Mr Theodore E. Heck

1. I hereby submit this NOTICE OF APPEAL of the Separation-Disqualification action consummated on 18 August 1964 by the Hq. U.S. Army Weapons Command (Hq. USAWECOM), Rock Island Arsenal, Rock Island, Illinois.
2. This action has been appealed and reviewed by the Department of Army, through the Secretary of the Army level. Copies of the Appeal Notices at each level were forwarded to your office.
3. I request that the Civil Service Commission conduct a complete and comprehensive investigation and review of the circumstances, merits, and procedures associated with the action; that the decision to separate be reversed and that I be fully restored with the pay, position, and other benefits which would have normally accrued made available to me.
4. I request that you devote particular attention to the basic requirement that as a Probationary Employee I am entitled to a full and fair opportunity to demonstrate my abilities and fitness. This was not afforded by the Hq. USAWECOM in several major respects, all matters of affirmed evidence in the Separation-Disqualification action: a) For approximately the entire nine months that I was engaged at the Hq. USAWECOM, I was on a temporary duty assignment; b) The Separation-Disqualification action contains multiple evidences of falsehoods or perjury against me; c) The mechanics of the various levels of review have precluded the presentation of evidence opposed to that of the Installation. Further, not matters of affirmed evidence, is the type of actual duty assigned, my performance, the job description, the lack of performance criteria, and numerous other items essential to a full and fair evaluation.
5. I request that you furnish to me copies of the regulations pertinent to this appeal.

Yours,

T. E. Heck

788-7007
TELEPHONE

4011 Seventh A
Rock Island, Ill.

THEODORE G. HECK

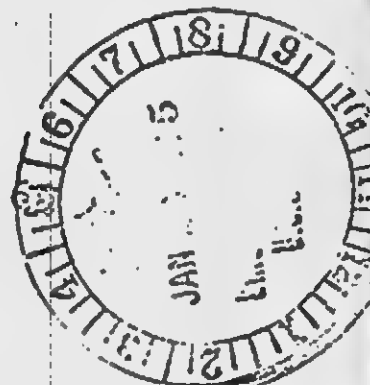
Registered Engineer

Mich. 9572 Wash. 5970

~~XXXXXXXXXXXXXXXXXXXX~~

Rock Island, Ill. 61201

28 Jan



TO: Regional Director,
U. S. Civil Service Commission,
Main Postoffice Bldg,
Chicago 7, Illinois

Subject: Request for Review of Letter of Decision, Appeal
of Removal Action - AMCPT-CR, 12 Jan 65

Dear Mr. Connor:

The inclosed copy of 28 Jan 65 letter, same subject, is
for your information.

Yours,

T. G. Heck, PE

~~TELETYPE UNIT~~ ~~154-7007~~

4011 Seventh
~~Rock Island Arsenal~~

Correspondence Mail
825704 (ret. rept)

THEODORE B. HENK
Registered Engineer
Mich. 9572 Wash. 5970
~~THEODORE B. HENK~~
Rock Island, Ill. 61201

28 Jan 1965

TO: Commanding General,
U. S. Army Weapons Command,
Rock Island Arsenal, Illinois

INFORMATION
COPY

Subject: Request for Review of Letter of Decision, Appeal
of Removal Action - AMOPT-CR, 12 Jan 65

1. In accord with paragraph 7 of U.S. Army Materiel Command
letter AMOPT-CR, dated 12 Jan 65, Subject: Letter of Decision,
Appeal of Removal Action, signed William H. Harris, Brig Gen, USA

I do hereby request a review by the Secretary of the Army
of the unacceptable decision stated in paragraph 6 of that letter.

2. Further, I request that I be granted sufficient time to
prepare and submit to the Secretary of the Army a brief in
which I will review the above letter, the inclosure "Report
of Inquiry" transmitted to me with that letter, and the items
to which they specifically and by inference refer.

3. Your transmittal, dated 20 Jan 65, was received on 21 Jan 65;
thus this request is within the ten calendar days specified by
General Harris.

4. Please advise status of my again repeated request (25 Jan 65)
for copies of the rules and regulations pertinent to my case.

Yours,

T.B. Henk, P.E.

CHS:LLW:seg

December 10, 1964

Mr. Theodore G. Heck
4011 Seventh Avenue
Rock Island, Illinois

Dear Mr. Heck:

This is with reference to your letter of December 8, 1964, inquiring into the proper procedure to obtain a review of the performance rating assigned to you on June 18, 1964. You asked the Commanding Officer of the Rock Island Arsenal on July 16, 1964, for a review of this rating, and state that no such review has been made.

The Commission has no information as to the procedures about which you inquire. From your letter and information copies of other correspondence you sent to us earlier, it appears that you were given this performance rating while you were serving in your probationary period. You were separated from the service on August 18, 1964, while you were still serving under this probationary period. Apparently the agency felt that since you were separated, you no longer were entitled to a review of the performance rating itself,

The Commission's regulations provide that an employee serving a probationary period whose services or conduct are not considered satisfactory by his agency, may be separated by merely advising him in writing why he is being separated and the effective date. If that is accomplished, there is no appeal right to the Commission. Apparently that was done in your case and you entered an appeal under agency grievance procedures. We have no information as to what occurred as the result of your grievance but assume it was considered.

Since the Commission has no jurisdiction in connection with this matter, our only suggestion is that you inquire of your former employing agency what disposition is being made of your request for the review. Also, if this request had been denied, why it was denied?

Sincerely yours,

J. A. Connor
REGIONAL DIRECTOR

(300) 468-7177

4011 Seventh Ave.

TOWNSEND E. HENK

Registered Engineer

Mich. 9572

Wash. 5970

XXXXXXXXXXXXXXXXXXXX

Rock Island, Ill. 61201



8 Dec 64

Regional Director,
U.S. Civil Service Comm.
Main Postoffice Bldg.
Chicago, Illinois

Dear Sir:

On 18 Jun 64, I received the "UNSATISFACTORY" Employee Performance Appraisal (form 1052) enclosed. On 19 Jun, I appended the notation indicated in block B-2, signed, sealed, and returned the original.

On 16 Jul 64, my attorney prepared and mailed a request for Army Establishment review per CFR-P4.6-2 with an information copy to your office.

To date, I am unaware of any review action whatsoever having been taken in connection with this request. Since atleast a reasonable period of time has elapsed, I ask that you advise me of the proper procedure to obtain such a review as the CFR-P4 does not provide for this contingency.

Yours,

A handwritten signature in dark ink, appearing to read "T.E. Henk", followed by the letters "P.E." in a larger, bold font.

CIVIL SERVICE COMM. INFORMATION COPY

Received
9/8/64
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Mr. Harold Sedrel,
U. S. Army Rock Island Arsenal
Personnel and Training Office
Rock Island, Illinois

SUBJECT: SELECTION OF GRIEVANCE EXAMINERS

1. Your letter of August 28, 1964, Subject: "Selection of Grievance Examiners" does not indicate specifically which of my appeals is to be examined. However, I will presume you are referencing the "Notice of Appeal from Decision in respect to Separation-Disqualification of Theodore G. Hock", dated August 18, 1964, addressed to B. Gen. Roland B. Anderson.

2. It is noted here that the review action requested by letter, Subject: "Employee Performance Appraisal", dated July 16, 1964, has not been initiated under CPR-P4. This too requires that I select a representative, although with different qualifications. Should this be the review action contemplated by your letter of August 28, 1964, please clarify to this effect.

3. Your letter, dated August 28, 1964, Paragraph 2, lists:

Mr. Russell Schultz, Tooling and Production Equipment
Section, Arsenal Operations Division;
Mr. Anthony J. Slawacki, Supply and Maintenance
Directorate, Headquarters, U.S. Army Weapons Command;
Mr. Frank W. Carlson, Production Planning Unit, Arsenal
Operations Division

as available Grievance Examiners. I do not know, and you do not indicate, the qualifications of any of these people. Apparently none is a Professional Engineer, so qualified to review a matter of such nature. However, by virtue of general reputation, I will select:

MR. FRANK W. CARLSON, PRODUCTION PLANNING UNIT, ARSENAL
OPERATIONS DIVISION,

to review the precipitous actions which culminated in my separation on August 18, 1964, in complete disregard of my request for review of the initiating Employee Performance Appraisal (refer Paragraph 2, above).

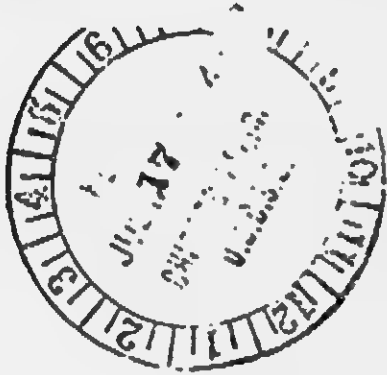
Subject: Selection of Grievance Examiners
Theodore G. Heck
September 3, 1964

4. I again repeat my request that copies of the pertinent Civilian Personnel Regulations (CPR's), as referenced in your correspondence be furnished. Sufficient time has now elapsed for you to acquire and transmit copies for our use. Since you have not transmitted the applicable regulations for our guidance, we rely upon the contents of your correspondence to present our rights and/or options (eg: that we are restricted to the three persons named for selection as Grievance Examiners; that the qualifications of these individuals will not be presented for our appraisal; etc.).

Theodore G. Heck
THEODORE G. HECK

CC: Commanding General
Weapons Command
Rock Island Arsenal
Rock Island, Illinois

Director, Chicago Region
U.S. Civil Service Commission



July 16, 1964

Commanding Officer
Rock Island Arsenal
Rock Island, Illinois

SUBJECT: EMPLOYEE PERFORMANCE
APPRAISAL
Theodore G. Heck
Industrial Engineer GS-896-12
Nr 1019

On June 18, 1964, I was handed an executed Employee Performance Appraisal (DA Form 1052) rating me "UNSATISFACTORY" as an Industrial Engineer, GS-896-12. The rating was assigned by my immediate supervisor, Paul H. Noffke, Combat Vehicle Branch, and approved by Richard L. Milne, Planning Division; Directorate of Procurement and Production, Col. Chester H. Johnson; Hq. USAMECOM, Brig. Gen. R. C. Anderson, Commanding.

My name is Theodore G. Heck, and my mailing address is 4011 7th Avenue, Rock Island, Illinois. My grade and position rating are Industrial Engineer, GS-896-12. The adjective rating I received was "UNSATISFACTORY" and the adjective rating I believe correct is "OUTSTANDING". The organizational segment to which I am assigned is AMSWE PFI 32540.

My principal arguments in support of a request for review:

There are no facts sufficiently stated in the Employee Performance Appraisal, Form #1052, to justify the performance rating therein stated or separation from the service, in that the findings contain only opinions and conclusions of the supervisor without any ultimate facts having been set forth.

I request a hearing and an opportunity to respond to these scurrilous attacks upon my Professional Engineering reputation by non-professional, novitiate supervisors, Noffke and Milne.

T. G. Heck, PE

COMBINATION PERFORMANCE APPRAISAL (CONTINUED FROM PAGE 1)		1. TYPE OF APPRAISAL <input checked="" type="checkbox"/> OFFICIAL 1963 <input type="checkbox"/> UNOFFICIAL	
2. LAST NAME-FIRST NAME-MIDDLE INITIAL HECK, Theodore G.		3. TITLE, GRADE AND JOB NUMBER Industrial Engineer GS-896-12 Nr 1019	
4. INSTALLATION No, USAMC	5. ORGANIZATIONAL SEGMENT ANSHE PFP 32540	6. APPRAISAL PERIOD FROM 9-13-63 TO 6-30-64	
7. SUPERVISOR'S EVALUATION OF PERFORMANCE ON THE ABOVE JOB (This consists of performance as outlined in "Performance Appraisal, a Guide for Supervisors" (GSA Form 101-101) and "Performance Appraisal, a Guide for Employees" (GSA Form 101-102). It should be based on the employee's performance during the appraisal period and should reflect the supervisor's opinion of the employee's performance and capacity which may be expected in the future.) <p>Mr. Ted Heck has been employed in the Combat Vehicle Branch since September 1963 and his performance is evaluated as follows:</p> <ol style="list-style-type: none"> 1. His technical experience enables him to make sound decisions in the technical area. 2. The quantity and timeliness of work delivered is average and schedules are met. 3. Basic written communications are factual. 4. Oral expression is firm but tends to be sarcastic. 5. His cooperation and working relationship with others is unsatisfactory. Undesirable situations occur frequently when he is involved in discussions with fellow employees because of his lack of tact and argumentative attitude. 6. Under adverse conditions his response is uncooperative and often in an abusive manner. <p>Mr. Heck's performance has demonstrated that he is uncooperative and sarcastic in dealing with co-workers. In conclusion, his ability, conduct and general character traits are such that it is recommended that the employee be separated from the Federal service.</p>			
8. PERFORMANCE RATING (GSA Form 101-101)	9. EMPLOYEE'S SIGNATURE <i>Theodore G. Heck</i>	10. DATE OF DISCUSSION 6/17/64	
<input type="checkbox"/> SATISFACTORY	11. SUPERVISOR'S SIGNATURE <i>Theodore G. Heck</i>	15. DATE 6/17/64	
<input type="checkbox"/> OUTSTANDING (For further action)	12. APPROVAL OF OUTSTANDING RATING	16. DATE	
<input checked="" type="checkbox"/> UNSATISFACTORY (For further action)	13. APPROVAL OF UNSATISFACTORY RATING	17. DATE 6/17/64	
NOTE: The above information should be retained in the employee's personnel file. It should be removed from the file if you prefer.			

1. LARRY'S GOING BACK TO IMPROVE RESEARCH TO UNLOCK ETHANOLING AND TO

התאחדות המורים והמורות, המכונה "התאחדות המורים והמורות", היא ארגון המייצג את המורים והמורות במערכת החינוך. מטרתו היא להגן על זכויותיהם, לשפר את תנאי העבודה שלהם, ולקדם את האינטרסים שלהם. התאחדות זו פועלת בשיתוף עם משרד החינוך, משרד הרווחה, ומשרד העבודה.

[illegible]

These procedures, that are not necessary to carry out the work of the
the new bank, are not subject to the same level of control.

2-10-93

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Figure 1

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EMPLOYEE PERFORMANCE APPRAISAL (Civilian Personnel Regulation P-6)		1. TYPE OF APPRAISAL <input checked="" type="checkbox"/> OFFICIAL <input type="checkbox"/> PROB <input type="checkbox"/> UNOFFICIAL	
PART A			
2. LAST NAME-FIRST NAME-MIDDLE INITIAL		3. TITLE GRADE AND JOB NUMBER	
HECK, Theodore G.		Industrial Engineer GS-896-12 Nr 1019	
4. INSTALLATION	5. ORGANIZATIONAL SEGMENT	6. APPRAISAL PERIOD	
Hq, USAMC	AMSC PFP 32540	FROM 9-13-63 thru 6-30-64	
7. SUPERVISOR'S EVALUATION OF PERFORMANCE ON THE ABOVE JOB (Give examples of performance as outlined in "Performance Appraisal, a Reference Manual for Supervisors" as appropriate, stating "Good" or "Not Good" before each performance appraisal, indicating favorable aspects of performance and aspects which may warrant further improvement.) (If it is agreed to make a two appraisals check and check)			
Mr. Ted Heck has been employed in the Combat Vehicle Branch since September 1963 and his performance is evaluated as follows:			
1. His technical experience enables him to make sound decisions in the technical area. 2. The quantity and timeliness of work delivered is average and schedules are met. 3. Basic written communications are factual. 4. Oral expression is firm but tends to be sarcastic. 5. His cooperation and working relationship with others is unsatisfactory. Undesirable situations occur frequently when he is involved in discussions with fellow employees because of his lack of tact and argumentative attitude. 6. Under adverse conditions his response is uncooperative and often in an abusive manner.			
Mr. Heck's performance has demonstrated that he is uncooperative and sarcastic in dealing with co-workers. In conclusion, his ability, conduct and general character traits are such that it is recommended that the employee be separated from the Federal service.			

PERFORMANCE RATING (Check one)	9. EMPLOYEE'S SIGNATURE	10. DATE OF DISCUSSION
SATISFACTORY	11. SUPERVISOR'S SIGNATURE	6/17/64
OUTSTANDING (Indicate condition)	12. APPROVAL OF OUTSTANDING RATING	13. DATE
UNSATISFACTORY (Indicate condition)	14. APPROVAL OF UNSATISFACTORY RATING	15. DATE
		6/18/64

8. The official performance rating assigned may be appealed. Information on the appeal procedure may be obtained from your supervisor, or if you prefer from the Civilian Personnel Branch.

PART B

NOTE: Part B is not a part of the performance rating and is not subject to appeal.

1. WHAT IS BEING DONE TO IMPROVE PERFORMANCE, TO UTILIZE STRENGTHS, AND TO DEVELOP POTENTIAL ABILITY?

Discussions have been made with Mr. Heck concerning his work and attitude while employed in the Combat Vehicle Branch. These discussions were made in January, April and May and the primary areas covered were (1) the personnel relationship between Mr. Heck and fellow employees and supervisors (2) The negative attitude and non-conformity to the "whys and wherefors" of Federal Government employment.

2. EMPLOYEE'S COMMENT (Comment made here is not an appeal of your rating. If you wish to appeal, see your supervisor or Civilian Personnel Office for procedure.)

This is a completely unfair, ill-advised appraisal prepared in an apparent attempt to justify a pre-judicial determination. I shall appeal the rating and recommendation.

T. G. Heck, PE

6/19/64

PE

seal
MICHIGAN

6-1 PE

seal

WASHINGTON

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from the original bound volume

IN THE
UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 24,654

FILED APR 23 1971

THEODORE G. HECK,

Nathan J. Paulson
Appellant
CLERK

v.

STANLEY R. RESOR, Secretary of the
Department of the Army,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF AND ARGUMENT FOR APPELLANT

Benjamin S. Adamowski
Paul D. Newey
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One North LaSalle Street
Chicago, Illinois 60602

Of Counsel:

Francis X. Riley

Attorneys for Plaintiff-Appellant

(i)

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,654

THEODORE G. HECK,
Appellant,

v.

STANLEY R. RESOR, Secretary of the
Department of the Army,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF AND ARGUMENT FOR APPELLANT

ISSUES PRESENTED FOR REVIEW

1. Did the Court below err in refusing a hearing as to whether the discharge of the appellant, a probationary employee of the Department of the Army, was arbitrary and capricious and, therefore, illegal?

2. Did the Court below err in granting the department's motion for summary judgment on the ground that there was no material issue of fact, when the record at the time reflected at least ten factual issues to be resolved, before

the court could determine whether appellant's discharge was arbitrary and capricious?

This case has not been before this court on any previous occasion.

NATURE OF THE ACTION

The plaintiff sought judicial review of the administrative action, discharging him as a probationary employee, because of his unsatisfactory attitude, his lack of cooperation with other employees, and his insubordination. After a full pursuit of the administrative process, his discharge was sustained.

He then filed this action seeking an order that his discharge was illegal, as a denial of substantive due process, and praying that a mandatory injunction issue directing the Secretary to reinstate him. The department moved for a dismissal, and alternatively, for a summary judgment on the grounds that there were no material issues of fact, and that it was entitled to a judgment as a matter of law.

The court below entered an order granting the department's alternative motion for summary judgment. This appeal is from that order.

STATEMENT OF FACTS

Plaintiff was employed as a civilian industrial engineer (career-conditional appointment), at Headquarters, United States Army Weapons Command, Rock Island Arsenal, Illinois, from September 13, 1963 to August 18, 1964. (Par. 2, A.1) While still within his one-year probationary period of employment, plaintiff was advised by letter dated July 7, 1964 and bearing the signature of Paul H. Noffke, Chief, Combat Vehicles Branch, Army Weapons Command, Rock Island Arsenal, Illinois, of his proposed "separation-disqualification" from his position as industrial engineer, to become effective August 3, 1964. (A.26) Paragraph 2 of the letter explained the basic reasons for the action:

"This action is being taken because your attitude has not been satisfactory during your probationary period. You have been unco-operative in your working relationships with others. In your discussions with fellow employees, you show a lack of tact by becoming argumentative and sarcastic. You have been insubordinate with your supervisor and those placed in the capacity of acting chiefs."

Specific incidents predicated the general charges were listed in paragraph 3 of the letter and delineated further in the attachments to the letter. (*id.*)

The plaintiff replied to the charge in a letter dated July 15, 1964, unequivocally denying the charges detailed in the notice. A request was made for an early hearing. (A.32) On July 31, 1964, a meeting was held in the office of G. H. Nickell, Deputy Chief, Personnel and Training Office at which plaintiff made a personal reply to the proposed separation. This reply was in writing. (A.35) At the July 31, 1964 meeting, the proposed separation date was extended from August 3, 1964 to August 17, 1964.

A Notice of Decision by the Commander, Army Weapons Command dated August 17, 1964 was sent to plaintiff informing him that:

"The charges contained in Paragraphs 3, 4, 5 and the attached exhibits A, B, C, and D of the proposed separation-disqualification letter are supported with substantial evidence. After careful consideration of these charges and your personal and written replies thereto, it has been decided that all charges are sustained and warrant your separation-disqualification. Your separation-disqualification will be effected on 18 August, 1964" (A.38)

Plaintiff was advised of his right to appeal the decision. (*id.*) Plaintiff, on August 18, 1964, the date his separation became effective, notified the Commanding General in writing of his intent to appeal the decision under the applicable regulations. (A.40)

In accordance with Employee Grievance and Appeal Procedures, a hearing was conducted before Grievance Examiner Frank W. Carlson on September 30, 1964 (A.42-127) The Grievance Examiner recommended, based on an analysis of the charges, testimony, and other evidence, that the action taken in the Commander's Notice of Decision be sustained. (A.128-143)

On December 1, 1964, the U.S. Army Materiel Command, Washington, D.C., the reviewing authority, requested from the Grievance Examiner additional information regarding the action so as to enable "a proper adjudication." It was supplied. (A.144-148) After review by the U.S. Army Materiel Command, plaintiff was notified in a letter dated January 12, 1965, that "it is the decision of this Headquarters that the penalty of dismissal is warranted and your appeal for restoration to duty is denied." He was informed of his right to appeal to the Secretary of the Army. (A.148)

Plaintiff gave notice of his request for review by the Secretary of the Army on January 28, 1965. (A.150) The Secretary of the Army, on May 7, 1965, affirmed the decision of January 12, 1965. (Par.3, A.3) After final review by the Secretary of the Army, plaintiff submitted on May 25, 1965, a Notice of Appeal to the Director, Chicago Region, U.S. Civil Service Commission, requesting that they conduct an investigation and review of the entire case, reverse the decision, and fully restore plaintiff to his former position. (A.152) On June 2, 1965, the Civil Service Commission informed plaintiff that it had no jurisdiction to review the action of the department terminating an employee during his probationary period for what the department believes to be unsatisfactory services or conduct. (A.151) The plaintiff exhausted his administrative remedies and filed an action in the District Court for the District of Columbia on October 20, 1965, seeking reinstatement. (A.1)

The action filed in the Court below challenged the separation on the ground that charges against plaintiff "were false, unreasonable, and malicious and that the action was

arbitrary and capricious in that they were not supported by the evidence, * * *." (Par.9, A.3)

This was the issue joined by the pleadings in the court below. (Par.9, A.6) When the department filed its motion alternatively for summary judgment, the plaintiff opposed it in law, and supported its opposition with affidavits. The first was an eye witness to the fact that plaintiff refused to sign a leave card on January 27, 1964, not January 13, 1964, as charged, which was confirmed by plaintiff's affidavit to that effect. Affirmatively, in that affidavit, Heck was able to recall the date because it was the day after his father died, and he had assisted a motorist in trouble, which caused him to be late for work. (A.18, 20)

The third affidavit was from his actual supervisor, who had been wrongfully fired, (402 F.2d 1002) from his position in the department thirty days before this case came to trial. (A.42 and 402 F.2d at 1007-08) If Burkett the affiant, had been available at the September 30 hearing, his testimony would have been to the same effect as his affidavit. Thus, the fact issues of falsehood, contentiousness, and incompetence were before the court below on this alternative motion. The resolution of those fact issues were underlying the legal issue raised by the complaint, of the wrongful discharge of plaintiff.

ARGUMENT

I.

THE COURT BELOW ERRED IN REFUSING A HEARING TO THE PLAINTIFF, ON THE ISSUE THAT HIS DISCHARGE WAS ARBITRARY AND CAPRICIOUS, AND THEREFORE ILLEGAL.

The issue here is the due process to which plaintiff was entitled prior to his discharge. The statement of facts recounts the procedural due process. However, the issue in the court below and also here, is the denial of substantive due process.

Plaintiff was employed by the U.S. Army Weapons Command at Rock Island, Illinois from September 13, 1963 to August 18, 1964. (Par.2, A.1) His discharge, initiated by his Supervisor, Paul H. Hoffke, was based on, among other things, a memo dated January 13, 1964, complaining of a disagreement about initialing a leave card. (Par.3, A.26) One of the signers of the memo, Richard Milne, who was one of plaintiff's superiors, subsequently testified that on January 13th he had discussed the memo with plaintiff. (A. 87) Paul H. Noffke, who also signed the memo, testified that he joined in the January 13th discussion and then "re-evaluated the situation" on January 14th. (A.49)

Beverly Linn, Clerk-Timekeeper, testified that the leave card incident occurred after plaintiff had witnessed an accident. (A.79) Faye Kershner whose affidavit is Plf's Ex.A. (A.18) and plaintiff, whose affidavit is Ex.B. (A.20) state that the leave card incident occurred on a Monday (Kershner), January 27, 1964 (plaintiff) after plaintiff had arrived late to work. He had assisted an accident victim on his way back to Rock Island from Rochelle, Illinois, following a visit to his mother on the death of his father on Sunday, January 26, 1964. (A.103) Faye Kershner remembered that plaintiff's father had died the day before the incident. (Par.2, A.19) Plaintiff did not learn about the January 13 memo or the January 24 "re-evaluation" until the following July 7, upon receipt of the proposed discharge letter. (A.114)

Plaintiff's contention supported by the two women means that the only conclusion possible is that the January 13 memo was manufactured at some time after January 27th. It also means that both Milne, (A.86) and Noffke (A.76-77) lied under oath about it, and that Noffke also lied about his "re-evaluation" on January 24th. (A.49)

Milne, of course, is suspect because he also masterminded the trumped-up charges against another Rock Island Arsenal engineer, Paul W. Burkett, (Pl.Ex.C, A.22) who was discharged on September 1, 1964, and reinstated on March 10,

1969, pursuant to an order of the U.S. Court of Claims in *Burkett v. United States*, 185 Ct.Cl. 631, 402 F.2d 1002. (1968) In view of the foregoing, all of Messrs. Milne's and Noffke's acts and statements are suspect. (cf. Milne's activities in the Burkett case, 402 F.2d at 1007-08) Both of them testified at length against plaintiff. (A.46-58; 85-93)

If the charges were false, then his discharge is arbitrary and capricious, and unconstitutionally void.

"It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary and discriminatory." *Weiman v. Updegraff*, 344 U.S. 183, 192. (1952)

Here, the plaintiff's denial of due process was not only administrative, it was also judicial when the court below denied him the right to a hearing on the issue of his discharge being arbitrary and capricious, and based upon falsehood.

"[Government employees] are, we may assume, entitled to be free from dismissal on unconstitutional or flagrantly arbitrary grounds." *Vitarelli v. Seaton*, 102 U.S. App.D.C., 253 F.2d 338, 341. (1958)

As this court also said in refusing relief to a discharged employee, on the ground that the charge of incompetence was established. "We should not be understood as holding that appellant and others similarly situated are completely without protection against arbitrary discharge." *McGinty v. Brownell*, 101 U.S. App.D.C. 368, 249 F.2d 124, 125 (1957)

Paul Burkett was the plaintiff's supervisor during the period when the incidents charged, occurred. (A.117) But, at the time of this hearing, (A.42) he had already been the victim of Milne's malice. (402 F.2d at 1003) Thus, discounting Sedlack's (A.60-63) and Sculley's (A.64-71) collusion with Noffke and Milne, the case against Heck turns solely upon the latter's manipulation of the evidence. So much so that if the plaintiff can establish the falsehood of

the leave card, (Par. 3, A. 26) the whole fabric of these contrived charges will be proved. Therefore, to accord plaintiff substantive due process he must be given that opportunity in the court below.

The Court of Claims has defined this principle in jurisdictional terms as:

"* * * limited to an inquiry as to whether procedural requirements have been met, *unless there is some showing of arbitrary and capricious action* by administrative officials in discharging the veteran." (Underlining added) *Blackmar v. United States*, 128 Ct. Cl. 593, 120 F.Supp. 408, 413 (1954)

When the court below refused to permit the plaintiff to present evidence that the documents upon which the department relied were *post facto* the incident and contrary to the facts; and, when the court refused to permit the plaintiff to establish the basic falsehoods of Noffke and Milne, it deprived him the protection of the regulations. "Applicable regulations, and therefore the fundamentals comprising due process, must be honored both in letter and spirit." *Conn v. United States*, 180 Ct. Cl. 120, 376 F.2d 878, 881. (1967) For as that court observed in a contemporaneous case in which the grounds for the discharge were not contained in, and differed from, the written charges, "This constitutes a basic unfairness of such proportion as to warrant invalidating the discharge." *Urbina v. United States*, 180 Ct. Cl. 194, 199 (1967) So, here, a discharge based upon falsehood and malice cannot stand the constitutional test of a fair hearing. *Wieman*, 344 U.S. at 192.

II

THE COURT BELOW ERRED IN ENTERING A JUDGMENT SUMMARILY, WHILE THERE WERE MATERIAL ISSUES OF FACTS, JOINED BY THE PLAINTIFFS, SUPPORTED BY THE OPPOSING AFFIDAVITS.

The complaint charged falsehood, unreasonableness, maliciousness and capriciousness in his discharge. (Par. 9, A. 3) The answer categorically denied them all. (Par. 9, A. 6) When the defendant moved alternatively for summary judgment, the plaintiff opposed it and supported his opposition with affidavits. The first two (A. 18, 20) supported the fact issue of falsehood. The third established a prima facie case of malice, and a substantial case of plaintiff's competence. These were material issues of fact within the framework of the pleadings. (The department did not move to strike in the first instance. It answered. Then filed the shotgun motion.)

The pleadings and the affidavits raised the following questions of material of fact:

1. Whether there was a disagreement about plaintiff's initialing a leave card.
2. If so, whether the incident occurred on January 27, 1964.
3. Whether plaintiff saw the Milne-Noffke memo dated January 13, 1964, prior to July 7, 1964.
4. Whether Messrs. Milne and Noffke lied under oath when they said they discussed their memo. with plaintiff on January 13, 1964.
5. Whether Mr. Noffke lied under oath when he said he "re-evaluated the situation" on January 24, 1964.
6. Whether the Milne-Noffke memo dated January 13, 1964 was considered by Mr. Noffke in effecting plaintiff's discharge.
7. Whether Miss Beverly Linn lied under oath when she said plaintiff explained his late arrival by saying he had witnessed an accident.

8. Whether Miss Faye Kershner lied under oath when she said the leave card incident occurred on a Monday and that plaintiff's father had died the day before.
9. Whether plaintiff lied under oath when he said the leave card incident occurred on Monday, January 27, 1964, following his giving assistance to an accident victim while en route from his mother's home where he had gone the day before upon notification of his father's death.
10. Whether the Milne-Noffke memo dated January 23, 1964 was manufactured after the fact in order to establish an excuse to get rid of plaintiff.

Until these questions of fact are resolved, the denial of due process for falsehood, unreasonableness, malice and capriciousness cannot be resolved. Thus, the motion for summary judgment was improvidently entered.

"In order to entitle moving party to a summary judgment, it must be clearly shown that there is no issue as to a material fact in the case, and that movant is entitled to a judgment in his favor as a matter of law. Summary judgment should be only granted when it is clear what the truth is and where no genuine issue remains for trial. It is not the purpose of Rule 56 to deny to litigants the right of trial if they really have issues to try." *United States v. Burkett*, 5 Cir., 402 F.2d 426, 430. (1968)

In the case at bar the basic issues of falsehoods and malice are still to be decided, to see what the truth is. As that same court has said; "the court's duty is limited to determine whether factual issues exist, not in determining the issues themselves." *Gauk v. Meleski*, 5 Cir., 346 F.2d 433, 436. (1965)

Unless the court below tries the issues of falsehood and malice it can never be in a position to decide the fact issue raised by the pleadings. If substantive due process was denied, it was because the department accepted falsehood and ignored the malevolence of Noffke and Milne to plain-

tiff. And, these are issues patent on the record. But, this court has gone far beyond "patent" issues of fact in discouraging summary judgment. In *Washington Post Co. v. Keogh*, this court held that,

"summary judgment must be denied when there is 'doubt' whether an issue of fact has been raised, and that summary judgment is not usually appropriate when the issue raised concerns a subjective state of mind." U.S. App.D.C., 365 F.2d 965, 967; (1966) *Cert. den.* 385 U.S. 10, 11.

Here, the question of falsehood is less a state of mind, than is the credibility of conflicting witnesses. However, the malice and capriciousness of Noffke and Milne is not. This purely subjective conduct of theirs is the proper subject matter of fact finding. And, until evidence is produced, the court cannot determine "what the truth is." *Edwards v. Mazor Masterpieces, Inc.*, U.S. App.D.C., 295 F.2d 547, 550.

The alternative motion claimed no fact issue, and that the department "is entitled to judgment as a matter of law." (A.7) This means that conceding a fact issue, no matter how it is decided, the department would be entitled to a judgment as a matter of law. But, in *Neff v. World Publishing Co.*, 8 Cir., 349 F.2d 235 (1965), the court held that, "an issue of fact is not genuine unless it has legal probative force as to a controlling issue." (at, 239) The total thrust of Point I, *supra*, was that the lies of Noffke and Milne about the January 13th letter and 27th incident, and the malice evident in this case, buttressed by Burkett, (402 F. 2d 1002) raises genuine probative issues of fact based upon mental attitudes which can only be decided on the evidence. They cannot be decided on a motion for summary judgment. *Preston v. United States*, 2 Cir., 394 F.2d 456, 461. (1968)

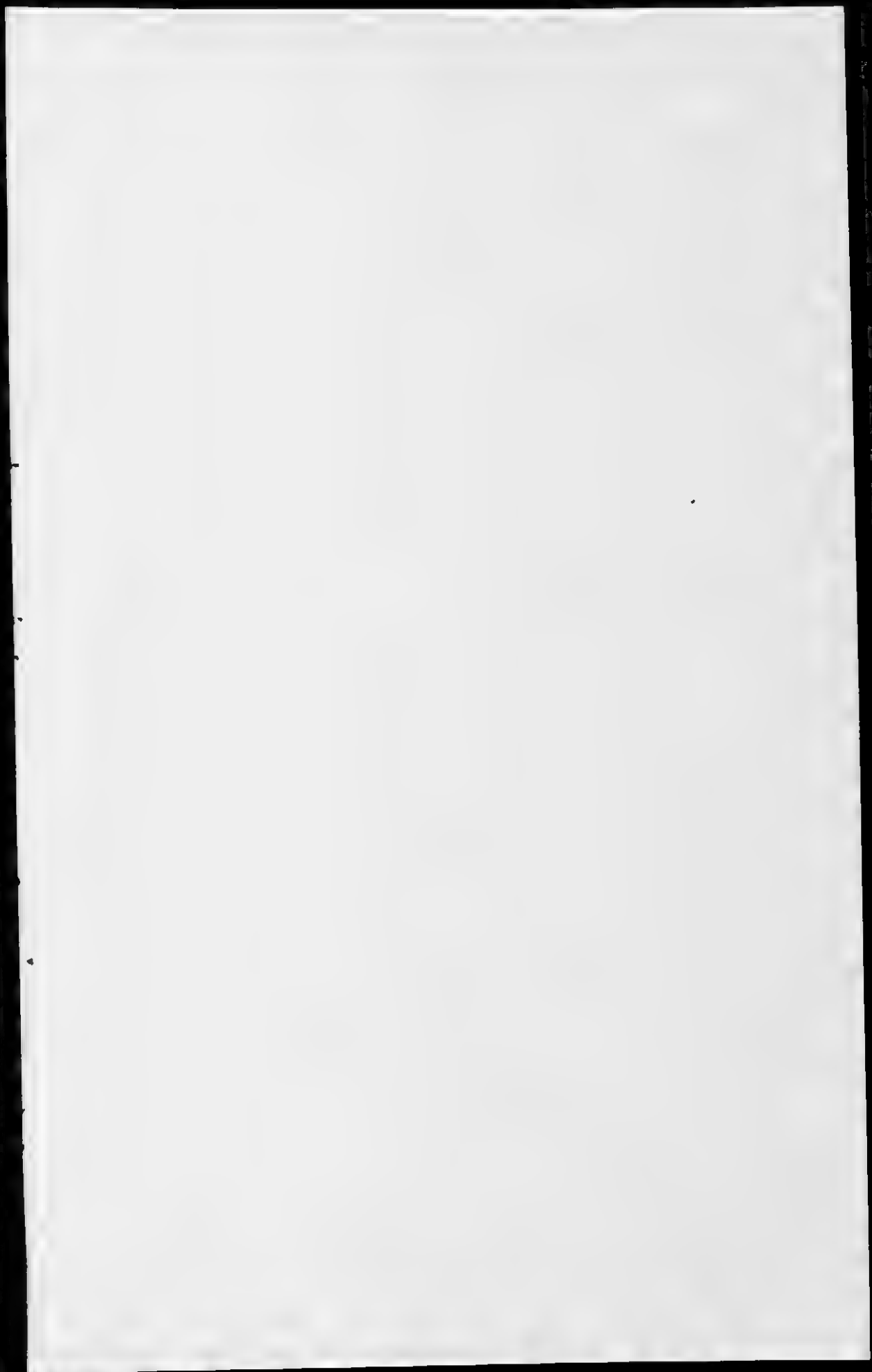
CONCLUSION

The plaintiff prays that this court reverse the judgment summarily entered below, and remand the cause for the purpose of determining the issues of falsehood and malice, and for further proceeding according to law.

Respectfully submitted,

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5716-B
BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,654

THEODORE G. HECK, APPELLANT

v.

STANLEY R. RESOR, Secretary of the Army, APPELLEE

Appeal from the United States District Court
for the District of Columbia

THOMAS A. FLANNERY,
United States Attorney.

JOHN A. TERRY,
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C.A. No. 2606-65

United States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Paulson
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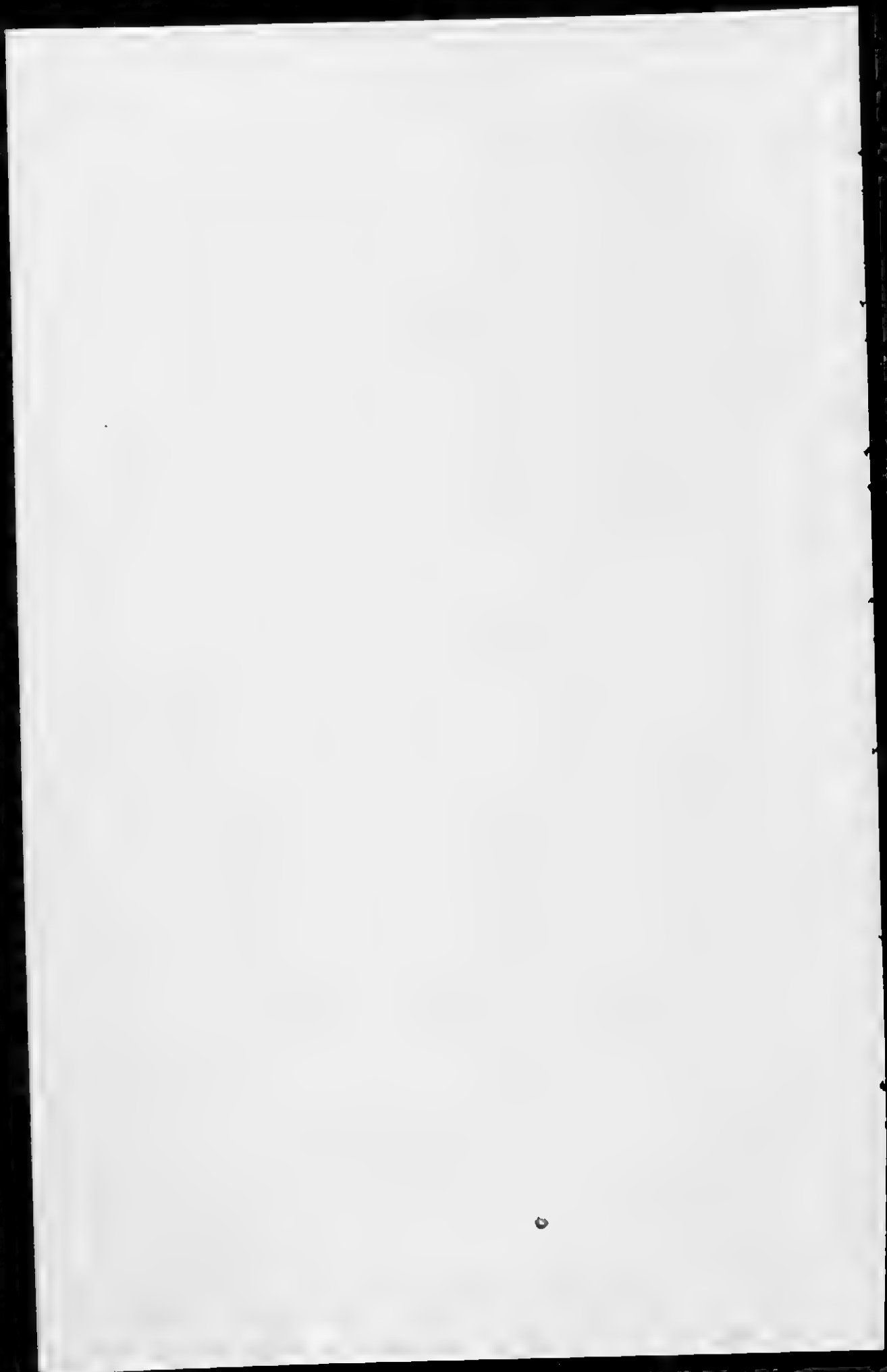
III

ISSUE PRESENTED *

In the opinion of appellee, the following issue is presented:

Did the District Court err in granting appellee's motion for summary judgment where appellant's discharge for insubordination and poor attitude was supported by the evidence, where there were no procedural irregularities, and where appellant was merely a probationary employee?

* This case has not previously been before this Court .



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,654

THEODORE G. HECK, APPELLANT

v.

STANLEY R. RESOR, Secretary of the Army, APPELLEE

BRIEF FOR APPELLEE

**Appeal from the United States District Court
for the District of Columbia**

COUNTERSTATEMENT OF THE CASE

This is an appeal from an order entered June 22, 1970, by District Judge Joseph C. Waddy granting appellee's motion for summary judgment. This case came before the District Court by a complaint filed by appellant on October 20, 1965, in an action for declaratory judgment and a mandatory injunction seeking reinstatement as an industrial engineer in the United States Army Weapons Command, Rock Island Arsenal, Illinois.

Procedural History

Appellant entered government service on September 13, 1963, as a civilian industrial engineer (career-conditional

appointment, GS-12, \$9,980 per annum) at the United States Army Weapons Command, Rock Island Arsenal, Illinois. Prior to the completion of his one-year probationary period, appellant was advised by letter dated July 7, 1964, of his proposed "separation-disqualification." Paragraph 2 of the letter explained the basis for the action:

This action is being taken because your attitude has not been satisfactory during your probationary period. You have been unco-operative in your working relationships with others. In your discussions with fellow employees, you show a lack of tact by becoming argumentative and sarcastic. You have been insubordinate with your supervisor and those placed in the capacity of acting chiefs. (A. 26-27.)¹

Specific incidents predicated the general charges were listed in paragraph 3 of the letter and delineated further in the attachments to the letter (A. 28-31). Appellant, through counsel, denied the charges in a letter dated July 15, 1964 (A. 32). On July 31 a meeting was held in the office of the Deputy Chief, Personnel and Training Office, at which appellant made a personal reply to the proposed termination action (A. 33-37).

A Notice of Decision by the Commander, Army Weapons Command, dated August 17, 1964, and signed by Chief of the Personnel and Training Office, was sent to appellant informing him that:

The charges contained in Paragraphs 3, 4, 5 and the attached exhibits A, B, C, and D of the proposed separation-disqualification letter are supported with substantial evidence. After careful consideration of these charges and your personal and written replies thereto, it has been decided that all charges are sustained and warrant your separation-disqualification. Your separation-disqualification will be effected on 18 August 1964. (A. 38-39.)

¹ "A." signifies the appendix to the briefs.

Appellant was advised of his right to appeal the decision within Army appellate channels and also of his limited right to appeal to the Civil Service Commission.

On August 18, 1964, the date his separation became effective, appellant notified the Commanding General in writing of his intent to appeal the decision under the applicable regulations (A. 40). In accordance with employee grievance and appeal procedures, a hearing was conducted before Grievance Examiner Frank W. Carlson on September 30, 1964 (A. 42-127). The grievance examiner recommended, after an analysis of the charges, testimony, and other evidence, that the action taken in the Commander's Notice of Decision be sustained (A. 128-139). After review by the Army Materiel Command, appellant was notified by Brigadier General William H. Harris, Director of Personnel and Training, in a letter dated January 12, 1965, that "it is the decision of this Headquarters that the penalty of dismissal is warranted and your appeal for restoration to duty is denied" (A. 148-149). Appellant gave notice of his request for review by the Secretary of the Army on January 28, 1965 (A. 154). The Secretary of the Army on May 7, 1965, in an order signed by Roy K. Davenport, Deputy Undersecretary of the Army, affirmed the decision of January 12, 1965, by the Commanding General of the Army Materiel Command which sustained appellant's dismissal and denied his request for restoration.

After final review by the Secretary of the Army, appellant submitted on May 26, 1965, a Notice of Appeal to the Director, Chicago Region, United States Civil Service Commission (A. 152). He was informed by the Civil Service Commission on June 2, 1965, that the regulations provided no avenue of appeal to the Commission from the action of an agency terminating an employee during his probationary period for what the agency believed to be unsatisfactory services or conduct (A. 151). Having thus exhausted his administrative remedies, appellant filed this action in the District Court on October 20, 1965.

Substantive Facts

At the hearing held September 30, 1964, before an Army examiner, Frank W. Carlson, five specific allegations of misconduct were examined at length.

First, it was alleged that appellant had refused to initial his time card after reporting late for work. The examiner determined that, though appellant was rude to the time clerk, he might have been misinformed as to the rules requiring leave, and he might also have been under stress following his father's death (A. 130-131). The examiner accordingly found that this charge did not warrant appellant's dismissal (A. 131).

Second, it was charged that appellant was indignant and argumentative when charged annual leave to take an Illinois driver's test. Mr. Paul H. Noffke, Chief of the Combat Vehicle Branch, testified that appellant became annoyed when told he would have to use annual leave on this occasion. Appellant complained that other employees were given free time for this purpose (A. 48, 51-53). He claimed that to deny him the same privilege was "unfair" and "prejudicial" (A. 48). Mr. Noffke stated that this complaint was made with "a high inflection of the voice which would cause consternation throughout the Directorate and Division" (A. 52). Appellant testified that he did protest because he thought it was common practice to let new employees take some time off to handle business affairs occasioned by a recent move and because he thought a driver's license was necessary to drive government vehicles in his work (A. 109-110). Although appellant denied any outward display of indignation (A. 110), the examiner found that appellant committed perjury in making such a denial (A. 135).

Third, it was alleged that appellant displayed a poor attitude toward his work and his fellow employees. Mr. Noffke testified that appellant refused to assemble data on transportation charges, though assigned that responsibility, because "he was hired as an Industrial Engineer and that this was an accountant's job" (A. 54). When

requested by Mr. Noffke to supply the data, appellant snapped that he was "not about to do this unless you order me to do it" (A. 54). Mr. Frederick W. Hays, a fellow engineer, also testified that on one occasion appellant refused to supply him with some data, claiming that "the work was not of an engineering nature and it wasn't his responsibility" (A. 83). The hearing examiner found that these instances supported the charge of poor attitude (A. 137).

Fourth, it was alleged that on two other occasions appellant was insubordinate in refusing to perform tasks assigned him by his supervisors. Mr. Emery Sedlock, as Acting Branch Chief, requested appellant to secure some data concerning the forecasting of production programs (A. 60). About ten days after this request, when Mr. Sedlock inquired about appellant's progress, appellant said that he "did not know when it would be ready" (A. 60). When asked to clarify this, appellant stated that he meant "just exactly what I said, I don't know" (A. 60). Appellant never did furnish the requested data (A. 61). The hearing examiner found that appellant did not cooperate and follow orders and that this conduct constituted insubordination (A. 133).

Finally, Mr. Joseph R. Sculley, Sr., a supervisory industrial engineer, testified to another instance of appellant's refusal to follow orders. Appellant was to represent his division at a meeting to review the regulations pertinent to engineering change orders (A. 64). Another engineer, Mr. Vincent W. Prunsk, Chief of the Installation Management Board, informed Mr. Sculley that appellant had not reviewed the data to be discussed at the meeting. On inquiry, appellant informed Mr. Sculley, who was Acting Chief of the Division, that he had not read the regulations, that a secretary should get him the data and that he was not going to go to the library to look for the regulations himself (A. 64). Mr. Sculley stated that appellant was loud and boisterous during this exchange (A. 64-65). Appellant denied being insulting

and claimed that he was hurrying to get ready for the meeting (A. 107-108). However, he admitted that "when Mr. Sculley was talking to me I was trying my best to ignore him completely" (A. 108). The hearing examiner concluded that this action also constituted insubordination (A. 134).

ARGUMENT

The District Court was correct in granting appellee's motion for summary judgment where appellant's discharge for insubordination and poor attitude was supported by the evidence, where there were no procedural irregularities, and where appellant was merely a probationary employee.

It is well settled that, apart from statute, a federal employee has no vested legal right, title, or interest in his position with the Government. The governing principle was summed up by the Supreme Court in *Cafeteria Workers Union v. McElroy*:²

The [Supreme] Court has consistently recognized that . . . the interest of a government employee in retaining his job, can be summarily denied. It has become a settled principle that government employment, in the absence of legislation, can be revoked at the will of the appointing officer. [Citations omitted.] This principle was reaffirmed quite recently in *Vitarelli v. Seaton*, 359 U.S. 535 [(1959)]. There we pointed out that Vitarelli, an Interior Department employee who had not qualified for statutory protection under the Civil Service Act, "could have been summarily discharged by the Secretary at any time without the giving of a reason . . ." 359 U.S. at 539.

Similarly, in *Bailey v. Richardson*³ this Court said: "[T]here is no basic right to Government employ, any

² 367 U.S. 886, 896-897 (1961).

³ 86 U.S. App. D.C. 248, 262, 182 F.2d 46, 60 (1950), *aff'd by an equally divided Court*, 341 U.S. 918 (1951).

more than there is to employment by any other particular employer."

Since appellant possesses no constitutional or common-law right to retention of his federal employment, whatever job-protection right he may have rest upon, and are limited by, the controlling statutory provisions that Congress has enacted for the protection of the civil service employee. The Civil Service Act,⁴ the Lloyd-LaFollette Act⁵ and the Veterans Preference Act⁶ provide job protection for established civil service employees by conferring on them the statutory right generally not to be discharged for any reason except "for such cause as will promote the efficiency of the [civil] service." They also establish certain procedures which must be followed prior to discharging a protected employee. However, the various protections established by these acts clearly were not available to appellant at the time of his discharge, because at that time appellant was only a probationary employee. The probationary period was established by Congress to determine if the prospective employee had the required ability and character to continue as a federal employee.⁷ It has been clearly established that probationary employees are not covered by the provisions of the Civil Service, Lloyd-LaFollette and Veterans Preference Acts.⁸ Therefore, the statutory substantive and procedural rights conferred on civil service employees by

⁴ 5 U.S.C. §§ 1101-1105, 1301-1303.

⁵ 5 U.S.C. § 7501.

⁶ 5 U.S.C. § 7512.

⁷ *Jaeger v. Freeman*, 410 F.2d 528, 531 (5th Cir. 1969); *Medoff v. Freeman*, 362 F.2d 472, 474 (1st Cir. 1966); 5 U.S.C. § 3321; 5 C.F.R. § 815.803.

⁸ *Kirkpatrick v. Gray*, 91 U.S. App. D.C. 138, 139, 198 F.2d 533, 534, cert. denied, 344 U.S. 880 (1952); *Bailey v. Richardson*, supra note 3, 86 U.S. App. D.C. at 255, 182 F.2d at 53; *Day v. United States*, 143 Ct. Cl. 311, 314-315 (1965); *Bander v. United States*, 158 F. Supp. 564, 566 (Ct. Cl. 1958); *Nedelhaft v. United States*, 181 F. Supp. 930, 932 (Ct. Cl. 1955).

those acts relative to discharge are not available to appellant as a probationary employee.⁹

The substantive and procedural protections which are afforded a probationary employee are extremely limited. The only source of his rights is the Civil Service Commission's regulations concerning probationary employees.¹⁰ The regulation applicable to this case provides:

When an agency decides to terminate an employee serving a probationary or trial period because his work performance or conduct during this period fails to demonstrate his fitness or his qualifications for continued employment, it shall terminate his services by notifying him in writing as to why he is being separated and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the agency's conclusions as to the inadequacies of his performance or conduct. 5 C.F.R. § 315.804.

The right to appeal a dismissal during the probationary period is also very limited. 5 C.F.R. § 315.806 provides for an appeal only where the employee alleges that his dismissal was based on discrimination because of race, color, religion, sex or national origin, or where improper procedure was used in a dismissal under § 315.805 for conditions arising prior to appointment. There is no right to appeal to the Civil Service Commission when an employee is terminated under § 315.805—as was appellant—absent a claim of discrimination.

⁹ *Donovan v. United States*, 139 U.S. App. D.C. 364, 365, 433 F.2d 522, 523 (1970), cert. denied, 401 U.S. 944 (1971); *Jaeger v. Freeman*, supra note 7, 410 F.2d at 531; *Medoff v. Freeman*, supra note 7, 362 F.2d at 474; *Kohlberg v. Gray*, 93 U.S. App. D.C. 97, 98, 207 F.2d 35, 36 (1953), cert. denied, 346 U.S. 937 (1954); *Kirkpatrick v. Gray*, supra note 8, 91 U.S. App. D.C. at 139, 198 F.2d at 534; *Bailey v. Richardson*, supra note 3, 86 U.S. App. D.C. at 255, 182 F.2d at 53; *Williams v. United States*, 434 F.2d 1346, 1348 (Ct. Cl. 1970); *Horne v. United States*, 419 F.2d 416, 418 (Ct. Cl. 1969); *Powers v. United States*, 169 Ct. Cl. 626, 629 (1965).

¹⁰ *Williams v. United States*, supra note 9, 434 F.2d at 1348; *Cohen v. United States*, 384 F.2d 1001, 1002 (Ct. Cl. 1967).

Although appellant was entitled only to written notice of his termination stating the Army's conclusions as to his inadequacies, together with notice of the effective date of the termination,¹¹ he received much more.¹² Appellant was (1) notified of the termination in writing, (2) was given an opportunity to reply to the charges in writing and in person, (3) was afforded a full evidentiary hearing before a grievance examiner, (4) was represented by counsel at all stages of the proceedings, (5) was given the right to present evidence and cross-examine witnesses against him at the hearing, and (6) was provided a two-tiered appellate review of the examiner's decision. Appellant has no basis—and we do not understand him to be claiming one—for attacking the procedure by which he was terminated. Appellant's only basis for seeking relief in the District Court was his belief that the Army was "wrong" in terminating him.

The scope of permissible judicial review in civil service discharge cases is extremely narrow. The statutes confer no supervisory power upon the courts. As stated by Mr. Justice Reed, sitting by designation, in *Batchelor v. United States*:¹³

The Supreme Court in *Keim v. United States*, 177 U.S. 290 (1900), considered the question of whether or not the courts may supervise the acts of an executive department head in discharging an employee. The Court's decision in that case clearly placed the removal of executive department employees within the ambit of executive discretion, and ruled that until Congress, by "special and direct legislation makes provisions to the contrary," *the courts cannot review the soundness or propriety of the exercise of the department head's discretion*. This case stands as a solid milestone in a long line of unbroken au-

¹¹ See *Nadelhaft v. United States*, *supra* note 8, 131 F. Supp. at 933.

¹² Cf. *Dargo v. United States*, 176 Ct. Cl. 1193, 1205 (1966).

¹³ 169 Ct. Cl. 180, 183, *cert. denied*, 382 U.S. 870 (1965).

thorities holding that where there are no established procedures or statutes to be followed, removal of an employee is solely within the discretion of agency officials and accordingly may be effected without giving reason. See *Cafeteria Workers v. McElroy*, 367 U.S. 886, 896-97 and cases cited therein. [Emphasis supplied.]

A court "may not step in and substitute its own judgment for that of the administrative agency."¹⁴ The wisdom or good judgment exercised in an administrative decision to discharge an employee is not reviewable by a court.¹⁵ The role of the courts in cases involving the discharge of employees entitled to statutory protection is limited to determining that the discharge is not arbitrary or capricious and that there has been substantial compliance with applicable procedural requirements. If there is a "rational basis in the evidence" for the determination of the agency, it will not be disturbed.¹⁶ As this Court has said in one such case:

The job of hearing the evidence and drawing a conclusion was the [Civil Service] Commission's and review of its work in the District Court involves not an independent determination by it from the cold record but, rather, a scrutiny of that record to see whether it is so lacking in support as to make the Commission's action unacceptably arbitrary.¹⁷

¹⁴ *Eustace v. Day*, 114 U.S. App. D.C. 242, 314 F.2d 247 (1962); *Green v. Baughman*, 100 U.S. App. D.C. 187, 190, 243 F.2d 610, 613, cert. denied, 355 U.S. 819 (1957); *Powers v. United States*, supra note 9, 169 Ct. Cl. at 630-631.

¹⁵ *Hargett v. Summerfield*, 100 U.S. App. D.C. 85, 88, 243 F.2d 29, 32, cert. denied, 325 U.S. 970 (1957); *Carter v. Forrestal*, 85 U.S. App. D.C. 53, 54, 175 F.2d 364, 365, cert. denied, 338 U.S. 832 (1949); *Levine v. Farley*, 70 App. D.C. 381, 386, 107 F.2d 186, 191 (1939), cert. denied, 308 U.S. 622 (1940); *Horne v. United States*, supra note 9, 419 F.2d at 419.

¹⁶ E.g., *Mendelson v. Macy*, 123 U.S. App. D.C. 43, 47-48, 356 F.2d 796, 800-801 (1966).

¹⁷ *Dabney v. Freeman*, 123 U.S. App. D.C. 166, 168, 358 F.2d 533, 535 (1965); see *Ellis v. Mueller*, 108 U.S. App. D.C. 174, 280 F.2d

"Congress has established administrative machinery to make these determinations."¹⁸ Furthermore, it is well recognized that "[t]he Executive must enjoy wide discretion in determining hiring and firing policies."¹⁹

Where dismissal of a probationary employee is in issue, the courts have an even lesser role.²⁰ If a federal employee who has completed probation and has achieved all the applicable statutory protections is dismissed, the court's function is limited to insuring that the proper procedures were followed and guaranteeing that the substantive right not to be discharged except for "such cause as will promote the efficiency of the service" is protected.²¹ However, as we have already stated, a probationary employee is not entitled to the elaborate procedural safeguards available to a regular civil service employee, nor has he the substantive right not to be discharged except to promote the efficiency of the service. When a probationary employee is discharged, there is no authorization for a review of the agency's action on the merits. Indeed, as the Supreme Court has observed, an "employee who had not qualified for statutory protection . . . could have been summarily discharged by the Secretary at any time without the giving of a reason."²²

722, *cert. denied*, 364 U.S. 883 (1960); *Hofflund v. Seaton*, 105 U.S. App. D.C. 171, 172, 265 F.2d 363, 364, *cert. denied*, 361 U.S. 837 (1959).

¹⁸ *Powell v. Brannan*, 91 U.S. App. D.C. 16, 17, 196 F.2d 871, 873 (1952).

¹⁹ *Jason v. Summerfield*, 94 U.S. App. D.C. 197, 201, 214 F.2d 273, 277, *cert. denied*, 348 U.S. 840 (1954).

²⁰ *Dargo v. United States*, *supra* note 12, 176 Ct. Cl. at 1205.

²¹ *Ellis v. Mueller*, *supra* note 17, 108 U.S. App. D.C. at 174, 280 F.2d at 722; *Hofflund v. Seaton*, *supra* note 17, 105 U.S. App. D.C. at 172, 265 F.2d at 364.

²² *Cafeteria Workers Union v. McElroy*, *supra* note 2, 367 U.S. at 896; *Vitarelli v. Seaton*, *supra*, 359 U.S. at 539; *Kameny v. Brucker*, 108 U.S. App. D.C. 340, 341, 282 F.2d 823, 824 (1960), *cert. denied*, 365 U.S. 843 (1961); *Horne v. United States*, *supra* note 9, 419 F.2d at 418.

Since appellant was afforded extensive procedural protections prior to his dismissal, far more than he was entitled to receive, and since the courts are precluded from substituting their judgment for that of the executive agency, especially where a probationary employee is concerned,²³ the trial court acted altogether properly, we submit, in granting appellee's motion for summary judgment.²⁴

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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²³ *E.g., Donovan v. United States, supra* note 9.

²⁴ In any event, the record amply demonstrates that appellant's dismissal was entirely reasonable. The charges of insubordination and lack of cooperation are fully supported by the evidence.